

Pt. 1943

an affirmative certification by the Department of Labor on the application for financial assistance now pending before the Farmers Home Administration or its successor agency under Public Law 103-354.

This resolution shall be in force and effect immediately.

The voting was yeas ___, nays ___, absent ____.

(Name of public body) _____
by (Name and Title) _____

Certification

I the undersigned as (Secretary) (Town Clerk) of the _____ do hereby certify that the foregoing resolution was duly adopted at a meeting of _____ duly called and held on the ____ day of _____ 19__, and that such resolution has not been rescinded or amended in any way. Dated this ____ day of _____, 19__.

(Seal)

(Town Clerk) (Secretary) of

Subpart H [Reserved]

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

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AUTHORITY: 5 U.S.C. 301; and 7 U.S.C. 1989.

SOURCE: 43 FR 55895, Nov. 29, 1978, unless otherwise noted.

Subpart A—Direct Farm Ownership Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 35692, Sept. 15, 1988, unless otherwise noted.

§ 1943.1 Introduction.

This subpart contains regulations for making initial and subsequent direct Farm Ownership (FO) loans. FO loans may be made to eligible farmers and ranchers, farm cooperatives, private domestic corporations, partnerships, and joint operations that will manage and operate not larger than family farms. It is the policy of Farm Service Agency (FSA) or its successor agency under Public Law 103–354 to make loans to any qualified applicant without regard to race, color, religion, sex, na-

tional origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee. See exhibit A of this subpart for making FP loans to entrymen on unpatented public lands.

[53 FR 35692, Sept. 15, 1988, as amended at 58 FR 227, Jan. 5, 1993; 58 FR 48282, Sept. 15, 1993; 61 FR 35925, July 9, 1996]

§ 1943.2 Objectives.

The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owners-operators of family-sized farms or to continue such operations when credit is not available elsewhere. Agency or its successor agency under Public Law 103–354 assistance enables family-farm operators to use their land, labor and other resources, and to improve their living and financial conditions so that they can obtain credit elsewhere.

[53 FR 35692, Sept. 15, 1988, as amended at 61 FR 35925, July 9, 1996]

§ 1943.3 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter. Such assistance consists of farm, home and non-farm planning, recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

§ 1943.4 Definitions.

As used in this subpart, the following definitions apply:

Additional security. Any security beyond that which is required to adequately secure the loan.

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Agency. The Farm Service Agency, its country and State committees and their personnel, and any successor agency.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA or its successor agency under Public Law 103–354 office.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for FO loan assistance in accordance with §1943.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103–354 regulations.

(e) Except for OL loan purposes, does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 25 percent of the average farm or ranch acreage of

the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103–354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103–354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103–354 debt.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

Family farm. A farm which:

(a) Will produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Will provide enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower, when a loan is made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm enterprise provided by:

(1) The borrower and any family member for a loan made to an individual.

(2) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(e) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a

part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments of all debts.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

Fish farming. The production of fish, mollusks or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a small or family farm (a small farm is a marginal family farm), including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan, but due to low income,

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cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a co-operative, corporation, joint operation or partnership.

Market value. The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term *mortgage* also refers to any security interest in chattel property.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operations and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and the entity must be authorized to own both real and personal property and to incur debts in its own name.

Primary security. Any real estate and chattel security which is required to adequately secure the loan. This is not to be confused with *basic security*, as de-

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fined in § 1962.4 of subpart A of part 1962 of this chapter.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

Socially disadvantaged applicant. An applicant/borrower who has been subjected to racial, ethnic, or gender prejudice because of his/her identity as a member of a group, without regard to his/her individual qualities. For entity applicants, the majority interest has to be held by socially disadvantaged individuals. FmHA or its successor agency under Public Law 103-354 has identified socially disadvantaged groups to consist only of Women, Blacks, American Indians, Alaskan Natives, Hispanics, Asians, and Pacific Islanders.

State Beginning Farmer program. Any program that is carried out by or under contract with a State and designed to assist persons in obtaining the financial assistance necessary to establish and/or maintain viable farming or ranching operations.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Undivided right. An undivided right of title, or a title to an undivided portion of an estate, that is owned by one of two or more tenants in common or joint tenants before division.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 19524, May 7, 1992; 58 FR 26681, May 5, 1993; 58 FR 48287, Sept. 15, 1993; 58 FR 58648, Nov. 3, 1993; 61 FR 35925, July 9, 1996; 62 FR 9355, Mar. 3, 1997; 62 FR 28619, May 27, 1997]

§ 1943.5 [Reserved]

§ 1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a

guarantee or a subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103-354 guarantee or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA or its successor agency under Public Law 103-354.

(c) Property and interests in property owned and income received by an individual applicant; a cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement farm ownership loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

§ 1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific pe-

riod of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA or its successor agency under Public Law 103-354 employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA or its successor agency under Public Law 103-354 Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, but have prior National Office approval before being issued.

§§ 1943.8–1943.9 [Reserved]

§ 1943.10 Preference.

(a) In addition to the preference established in subpart A of part 1910 of this chapter, an application for a loan for land purchase from an applicant who (1) has a dependent family, or (2) is an owner of livestock and farm implements necessary to successfully carry on farming operations, or (3) is able to make down payments will be given preference over one from an applicant who does not meet any of these criteria.

(b) The portion of a State's farm ownership (FO) loan fund allocation designated for applicants who are members of socially disadvantaged groups will be used exclusively to assist them in purchasing farmland. However, this requirement does not preclude the use of the State's regular allocation of FO funds for loans for other authorized FO loan purposes to applicants who are members of socially disadvantaged groups. (See exhibit B of this subpart, "Target Participation Rates for Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 Direct Farm Ownership (FO) Loans and Acquired

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Property Outreach Program for Members of Socially Disadvantaged Groups”.)

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21527, May 25, 1990]

§ 1943.11 Receiving and processing applications.

Applications for FO loans will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in exhibit M of subpart G of part 1940 of this chapter. Socially disadvantaged individuals will be provided the technical assistance necessary when applying for FO loans or other assistance to acquire inventory farmland. Such assistance shall include, but not be limited to, completion of application and farm and home planning.

[55 FR 21528, May 25, 1990]

§ 1943.12 Farm ownership loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of *controlled substance*) prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103-354 410-1, “Applications for FmHA or its successor agency under Public Law 103-354 Services,” that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) *An individual must:*

(1) Be a citizen of the United States (see § 1943.4 of this subpart for the defi-

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nition of *United States*) or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide forms I-151 or I-551, “Alien Registration Receipt Card.” Indefinite parolees are not eligible. If the authenticity of the information shown on the alien’s identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien’s identification card by completing INS Form G-641, “Application for Verification of Information from Immigration and Naturalization Records” obtainable from the nearest INS District. (See exhibit B of subpart A of part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA or its successor agency under Public Law 103-354 to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: “INTERAGENCY LAW ENFORCEMENT REQUEST.”

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable educational and/or on the job training or farming experience in managing a farm or ranch which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Have the character (emphasizing credit history, past record of debt repayment, and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s).

(5) Honestly endeavor to carry out the applicant’s/borrower’s obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rate and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near

which the applicant resides for loans for similar purposes and periods of time.

(7) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4 of this subpart).

(8) Have operated a farm or ranch for at least 3 years and satisfy at least one of the following conditions:

(i) Meet the definition of a beginning farmer or rancher.

(ii) The applicant, or anyone who will execute the promissory note, has not had direct FO loans outstanding for more than a total of 10 years prior to the date that the new FO loan is closed.

(iii) Have never received a direct FO loan.

(9) *Transition rule.* This applies to applicants with direct FO loans outstanding on April 4, 1996.

(i) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for less than 5 years, the applicant is eligible for new direct FO loans through April 4, 2006.

(ii) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for 5 years or more, those parties are eligible for new direct FO loans through April 4, 2001.

(10) Have not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances.

(11) Not be delinquent on any Federal debt. This restriction will not apply if the Federal delinquency is cured on or before the loan closing date.

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This

applies to the entity and *all* of its members, stockholders, partners, or joint operators as individuals.

(2) Be controlled by farmers or ranchers engaged *primarily* and *directly* in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator of not larger than a family farm after the loan is closed (except for limited resource applicants and as provided for in paragraph (b)(7) of this section) and consist of members, stockholders, partners, or joint operators who are *individuals* and *not* cooperative(s), corporations(s), partnership(s) or joint operation(s).

(4) If the members, stockholders, partners, or joint operators holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) They must be citizens of the United States (see § 1943.4 of this subpart for the definition of *United States*) or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641 "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See exhibit B of subpart A of part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA or its successor agency under Public Law 103-354 to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing a farm or ranch which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. This requirement must be met by the individual members, stockholders, partners or joint operators. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payment(s).

(iv) They and the entity itself must honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

(v) At least one member, stockholder, partner, or joint operator must operate the family farm.

(vi) The entity must own *and* operate the farm and be authorized to do so in the State(s) in which the farm is located.

(5) If the members, stockholders, partners, or joint operators holding a *majority interest* are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(4)(i) through (iv) and (vi) of this section must be met.

(ii) They and the entity itself must own *and* operate the family farm.

(6) If applying as a limited resource applicant, as defined in §1943.4 of this subpart:

(i) The requirements of paragraphs (b)(4)(i) through (iv) and (vi) of this section must be met by the entity and *all* its members, stockholders, partners, or joint operators.

(ii) The entity and *all* the members, stockholders, partners or joint operators must own *or* operate a small or family farm; and at least one member, stockholder, partner, or joint operator must operate the farm.

(7) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if: (i) All of the members of the entity are related

by blood or marriage, (ii) all of the members are or will operators of the entity, and (iii) the majority interest holders of the entity meet the requirements of paragraphs (b)(4) (i) through (iv) and (vi) of this section.

(8) Have one or more members, constituting a majority interest in the business entity, who have operated a farm or ranch for at least 3 years and who satisfy one of the following conditions:

(i) Meet the definition of a beginning farmer or rancher.

(ii) The applicant, or anyone who will execute the promissory note, has not had direct FO loans outstanding for more than a total of 10 years prior to the date that the new FO loan is closed.

(iii) Have never received a direct FO loan.

(9) *Transition rule.* This applies to business entity applicants with direct FO loans outstanding on April 4, 1996.

(i) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for less than 5 years, the applicant is eligible for new direct FO loans through April 4, 2006.

(ii) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for 5 years or more, those parties are eligible for new direct FO loans through April 4, 2001.

(10) Have not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances.

(11) Not be delinquent on any Federal debt. This restriction will not apply if the Federal delinquency is cured on or before the loan closing date. This eligibility restriction applies to the entity and all of its members.

(c) *Borrower training.* The applicant must agree to meet the training requirements of §1924.74 of subpart B of part 1924 of this chapter unless a waiver is granted in accordance with that

section. In the case of a cooperative, corporation, partnership, or joint operation, any individual member, stockholder, partner, or joint operator holding a majority interest in the operation or who is operating the farm must agree to complete the training or qualify for the waiver on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities. If the applicant has previously been required to obtain training, the applicant must be enrolled in and attending, or have satisfactorily completed, the training required.

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21528, May 25, 1990; 56 FR 3972, Feb. 1, 1991; 58 FR 69199, Dec. 30, 1993; 62 FR 9355, Mar. 3, 1997; 62 FR 28619, May 27, 1997]

§ 1943.13 Outreach program for applicants/borrowers who are members of socially disadvantaged groups.

The purpose of this section is to establish procedures and responsibilities for carrying out the Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Applicants/ Borrowers who are members of socially disadvantaged groups.

(a) *Policy.* The FmHA or its successor agency under Public Law 103-354 FO Loan Outreach Program is a concerted effort to:

(1) Surface and correct problems and obstacles that prevent the participation of members of socially disadvantaged groups in the FO loan program.

(2) Target direct FO loan funds to members of socially disadvantaged groups to ensure they are provided ac-

cess to FO loan funds, as outlined in exhibit B of this subpart.

(3) Provide pamphlets, publications and general information on the direct FO loan program to members of socially disadvantaged groups.

(4) Provide assistance to members of socially disadvantaged groups to assure that the application process is expedient and complete. Assistance will be provided to borrowers of socially disadvantaged groups through special farm initiatives to assure that sound operating procedures are implemented to enhance the borrower's chances for successfully achieving the objectives of the direct FO loan program.

(b) *Field action.* The State Director shall designate the Farmer Programs Chief to coordinate the Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 Farm Ownership (FO) Loan Outreach Program to members of socially disadvantaged groups. The State's Civil Rights Coordinator will act as a resource person for this program. The Farmer Programs Chief will:

(1) Maintain close liaison with local, State and national organizations serving social disadvantaged groups to ascertain the reasons for the lack of participation of members of socially disadvantaged groups in FmHA or its successor agency under Public Law 103-354 direct FO loan program.

(2) Work closely with County Supervisors, District Directors, and National Office officials to remove obstacles and solve problems relating to the making of direct FO loans and credit sales to members of socially disadvantaged groups.

(3) Attend meetings of local, State, and Federal Governments and private organizations concerned with the economic and social development of members of socially disadvantaged groups.

(4) Train members of socially disadvantaged groups, interested individuals and groups involved with socially disadvantaged activities, in the packaging of applications and distribution of materials for use in the direct FO loan and credit sale programs.

(5) Provide pamphlets and publications on the direct FO loan and credit sale program.

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(6) Initiate special media outreach activities to inform members of socially disadvantaged groups of the availability of acquired farmland and of targeted and non-targeted direct FO loan funds.

(i) Information must be provided to community and farm oriented organizations, agriculture colleges, other USDA agencies and community leaders who are active in the farming area.

(ii) Newspaper articles, radio announcements and public television broadcasts will be used to publicize the FmHA or its successor agency under Public Law 103-354 Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of socially disadvantaged groups. *State Directors and required to publicize the program at least twice annually in a newspaper most used by members of socially disadvantaged groups.* This effort will be monitored by the National Office through Coordinated Assessment Reviews (CARs) and special planned visits to selected States.

(c) *Reports.* (1) State Directors will keep the Assistant Administrator, Farmer Programs, advised of any problems encountered in carrying out the FmHA or its successor agency under Public Law 103-354 Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Members of Socially Disadvantaged Groups which prevent their participation in this program.

(2) *Each State Director will make a semi-annual memorandum report to the Assistant Administrator, Farmer Programs, on May 1 and September 30 of each fiscal year on the Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of Socially Disadvantaged Groups.* The report will summarize accomplishments on the items set forth in §1943.13(b) of this subpart. The following should also be included in the report:

(i) The State and County of each direct FO loan and credit sale made to applicant/borrowers who are members of socially disadvantaged groups.

(ii) Number of applications for direct initial and subsequent FO loans and credit sales received during the period.

(iii) Number of direct initial and subsequent FO loans and credit sales approved during the period.

(iv) Number of applications on hand for direct initial and subsequent FO loans and credit sales at the end of the reporting periods.

(v) Number of announcements placed in local newspapers, on radio and public television.

(vi) Amount of each initial and subsequent direct FO loans and credit sales approved during the reporting periods.

(vii) Total dollar value of direct initial and subsequent FO loans and credit sales approved during the reporting periods.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 19524, May 7, 1992; 62 FR 28619, May 27, 1997]

§ 1943.14 Downpayment FO loan program for beginning farmers or ranchers.

(a) *Objectives.* The basic objective of the downpayment FO loan program is to provide credit and assistance to eligible beginning farmers or ranchers to become owner-operators of family-size farms, including inventory farm property. Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter.

(b) *Eligibility requirements.* Applicants must meet the “beginning farmer or rancher” definition in §1943.4 of this subpart to qualify for a downpayment loan.

(c) *Loan purposes.* Loans may be made to provide an amount equal to 30 percent of the purchase price or appraised value, whichever is lower, of the farm or ranch to be acquired, unless the applicant requests a lesser amount. The remaining balance of the purchase price or appraised value, whichever is lower, not to exceed 60 percent, may be guaranteed by FmHA or its successor agency under Public Law 103-354.

(d) *Loan limitations.* In addition to the loan limitations stated in §1943.17 of this subpart, the loan will not be approved if:

(1) The applicant cannot provide at least 10 percent of the purchase price of the farm or ranch.

(2) The purchase price or appraised value, whichever is lower, exceeds \$250,000.

(3) Financing provided by FmHA or its successor agency under Public Law 103-354 and other credit exceeds 90 percent of the purchase price or appraised value, whichever is lower.

(4) The other financing for the balance of the purchase price is amortized for less than 30 years and/or a balloon payment is scheduled within the 10 years of the FmHA or its successor agency under Public Law 103-354 loan.

(e) *Rates and terms*—(1) *Interest rate.* Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office). The interest rate for beginning farmer or rancher downpayment loans shall be 4 percent.

(2) *Terms of loans.* (i) Each loan made under this section shall be amortized over a period of 10 years or less, at the option of the borrower.

(ii) Loans under this section shall be repaid in equal annual installments.

(f) *Security.* (1) Each loan will be secured by a lien on the property being acquired with loan funds. Security requirements under §1943.19 of this subpart do not apply under this section.

(2) FmHA or its successor agency under Public Law 103-354's secured interest in the farm or ranch being acquired will be junior only to the party providing the financing for the balance of the purchase price to the applicant.

(3) The borrower must agree to obtain permission from the County Supervisor prior to granting any additional security interest in the farm or ranch as stated in §1965.16 of subpart A of part 1965 of this chapter.

(g) *Relationship between FmHA or its successor agency under Public Law 103-354 and a State Beginning Farmer program.* State Directors are delegated authority to execute a Memorandum of Understanding (MOU) with any State expressing an interest in coordinating financial assistance to beginning farmers or ranchers. The MOU must be executed within 60 days of the State notifying the State Director in writing of such interest, and will be developed in accordance with FmHA Guide Letter 1943-A-1 (available in any FmHA or its

successor agency under Public Law 103-354 office). Under the MOU, FmHA or its successor agency under Public Law 103-354 will agree to provide qualified beginning farmers or ranchers with a downpayment loan under this section and/or a guarantee of the balance of the purchase price provided by the State program. This agreement will be subject to applicable law, loan approval requirements, and the availability of funds. FmHA or its successor agency under Public Law 103-354 will not charge a fee to obtain or retain a guarantee in connection with any joint funding under the MOU. If any changes are made to the MOU, the Regional Office of the General Counsel (OGC) will be consulted prior to signing the MOU. States will send copies of signed MOUs to the attention: Director, Farmer Programs Loan Making Division, National Office.

(h) *Program outreach.* The State Director shall be responsible for publicizing the Downpayment FO Loan program, with special emphasis on Socially Disadvantaged Individuals, and facilitating the transfer of retirees farms or ranchers to eligible FO applicants within the respective State. Program outreach will include:

(1) Maintaining close liaison and attending meetings with local, State and national organizations serving the agricultural community.

(2) Providing information to community and farm oriented organizations, agriculture colleges, other USDA Agencies and community leaders who are active in the farming area.

(3) Use of newspaper articles, radio announcements, and/or public television announcements.

[58 FR 48287, Sept. 15, 1993]

§ 1943.15 [Reserved]

§ 1943.16 Loan purposes.

Loan funds may only be used to:

(a) Acquire or enlarge a farm or ranch. Examples of items that the Agency may authorize the use of FO funds for include, but are not limited to, the purchase of easements, the applicant's portion of land being subdivided, purchase of cooperative stock, appraisal and survey fees, and participation in special FO loan programs of

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this subpart. Down payments are authorized as a loan purpose subject to the following:

(1) A deed is obtained and the transaction is properly documented by debt and security instruments.

(2) Any prior liens meet the FO security requirements for the Agency's junior lien position.

(3) For contract purchases, purchase contracts must properly obligate the buyer and seller to fulfill the terms of the contract, provide the buyer with possession, control and beneficial use of the property, and entitle the buyer to marketable title upon fulfillment of the contract terms. The deed must be held in trust by a bonded agent until transferred to the buyer. Upon buyer's default, the seller must give the Agency written notice of the default and a reasonable opportunity to cure the default. Any sums advanced by the Agency must be repaid by the borrower.

(b) Make capital improvements. Examples of items that the Agency may authorize the use of FO funds for include, but are not limited to, the construction, purchase and improvement of farm dwellings, service buildings, and facilities that can be made fixtures to the real estate. In the case of leased property, the borrower must have a lease to ensure use of the improvement over its useful life or to ensure that the borrower receives compensation for any remaining economic life upon termination of the lease.

(c) Promote soil and water conservation and protection. Examples include the correction of well-defined, hazardous environmental conditions, and the construction or installation of tiles, terraces, and waterways.

(d) Pay closing costs.

[62 FR 9356, Mar. 3, 1997, as amended at 62 FR 28619, May 27, 1997]

§ 1943.17 Loan limitations.

(a) An FO loan will not be approved if:

(1) The total outstanding direct FO, Soil and Water (SW) or Recreation (RL) loan principal balance including the new loan owed by the applicant will exceed the lesser of \$200,000 or the market value of the farm or other security.

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(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The limitation found in §1943.29 (b) of this subpart is exceeded.

(b) Loans may not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in exhibit M to subpart G of part 1940 of this chapter. Refer to FmHA Instruction 2000-LL, "Memorandum of Understanding Between FmHA or its successor agency under Public Law 103-354 and U.S. Fish and Wildlife Service," for assistance in implementation.

[53 FR 35692, Sept. 15, 1988, as amended at 58 FR 48282, 48288, Sept. 15, 1993; 59 FR 25800, May 18, 1994; 62 FR 9356, Mar. 3, 1997]

§ 1943.18 Rates and terms.

(a) *Terms of loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA or its successor agency under Public Law 103-354, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA or its successor agency under Public Law 103-354 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA or its successor agency under Public Law 103-354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice,

the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the type of assistance involved. A lower rate is established in this exhibit for a limited resource applicant subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in §1943.4 of this subpart.

(2) The farm business plan shows that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(3) A borrower with limited resource interest rates will be reviewed each year at the time the analysis is conducted (see §1924.55 of subpart B of part 1924 of this chapter) and at any time a servicing action such as reamortization or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See §1951.25 subpart A of part 1951 of this chapter.)

(c) *Interest rate with joint financing.* When the applicant obtains financing from a private lender equivalent to 50 percent or more of the total funds needed, the interest rate on the direct FO loan will be fixed at a rate determined by the Agency Administrator but at not less than 4 percent for the term of the loan. The current rate is available in FSA offices.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18677, Apr. 30, 1992; 61 FR 35925, July 9, 1996; 62 FR 9356, Mar. 3, 1997]

§ 1943.19 Security.

Each FO loan will be secured by real estate. Chattels and/or other security will only be taken as security as set forth in paragraphs (b) and (c) of this section. The total amount of security required will be the lesser of either 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount. Security in excess of 150 per-

cent of the loan amount will only be taken when it is not practical to separate the property, i.e., a tract of land. All security taken, along with the value of the security, will be documented in the case file. This information will be obtained from values established in accordance with §1943.25 of this subpart. If the applicant disagrees with the real estate values established, FmHA or its successor agency under Public Law 103-354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103-354 requirements. In cases when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail. In unusual cases, the loan approval official may require a cosigner in accordance with §1910.3(d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Real estate security.* (1) A mortgage will be taken on all real estate acquired, or improved with FO funds, and by any additional real estate security needed to meet the requirements of this section.

(2) Security will also include items which are considered part of the farm and ordinarily pass with the title to the farm such as, but not limited to, assignments of leases or leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, and royalties from mineral rights.

(3) A first lien is required on real estate, when available. In addition, loans will be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA or its successor agency under Public Law 103-354 whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in subpart B of part 1927 of this chapter, except as modified by the "Memorandum of Understanding-FCA-FmHA or its successor agency under Public Law 103-354," FmHA Instruction 2000-R (available in any FmHA or its successor agency under Public Law 103-354 office).

(4) Advice on obtaining security will be received from OGC when necessary.

(5) The designated attorney, title insurance company, or the OGC will furnish advice on obtaining security when a life estate is involved.

(6) Any loan of \$10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in subpart B of part 1927 of this chapter provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA or its successor agency under Public Law 103-354 loan being made simultaneously with the FO loan.

(7) The Departments of Agriculture and Interior have agreed that FmHA or its successor agency under Public Law 103-354 loans may be made to Native Americans and secured by real estate when title is held in trust or restricted status. When security is so taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor; and

(ii) The BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(b) *Chattel security.* Ordinarily, FO loans will not be secured by chattels.

However, loans will be secured by chattels as follows:

(1) A first lien will be taken on equipment or fixtures purchased with loan funds whenever such property cannot be included in the real estate lien and the best lien obtainable on all real estate does not provide primary security for the loan.

(2) Chattel security will be obtained when the best lien obtainable on all real estate does not provide primary security for the loan.

(3) The same collateral may be used to secure two or more loans made, direct or guaranteed, to the same borrower. Therefore, junior liens on chattels may be taken when there is enough equity in the property. However, when possible, a first lien on selected chattel items should be obtained.

(4) Chattel security liens will be obtained and kept effective, as provided in subpart A of part 1962 of this chapter.

(c) *Other security.* (1) A pledge of real estate by a third party may be taken as security when the best lien obtainable on all real estate does not provide primary security for the loan.

(2) Other property may be taken as security when the best lien obtainable on all real estate does not provide primary security for the loan. Examples of such security include but are not limited to cash surrender value of life insurance, securities, patents and copyrights, and membership or stock in cooperatives and associations.

(d) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922-E (available in any FmHA or its successor agency under Public Law 103-354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(2) A lien will not be taken on property that cannot be made subject to a valid lien.

(3) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract being financed, improved, or otherwise used for collateral provides primary security for the loan(s).

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; personal vehicles necessary for family living or farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) A lien will not be taken on marginal land, including timber, when a softwood timber (ST) loan is secured by such land.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA or its successor agency under Public Law 103-354 and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Special security requirements.* When FO loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an FO loan(s) as individual(s) or when FO loans are made to eligible individuals who are members, stockholders, partners or joint operators of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA or its successor agency under Public Law 103-354 for any other farmer program direct or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(g) *Same security.* Except as provided in paragraph (f) of this section, when an FO loan (direct or guaranteed) is made to a borrower who has other FmHA or its successor agency under Public Law 103-354 loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18677, Apr. 30, 1992; 59 FR 22961, May 4, 1994; 59 FR 25800, May 18, 1994; 62 FR 9356, Mar. 3, 1997]

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§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) as well as subpart G of part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendation on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA or its successor agency under Public Law 103-354 representatives will evaluate the proposal and record the decision in the loan docket

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in accordance with subpart G of part 1940 of this chapter.

(b) *Civil rights.* The provisions of subpart E of part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA or its successor agency under Public Law 103–354 400–4, “Nondiscrimination Agreement,” in these cases.

(2) Any development financed by FmHA or its successor agency under Public Law 103–354 that will be performed by a contract or subcontract of more than \$10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of subpart F of part 1901 of this chapter apply.

(d) *Environmental requirements.* See subpart G of part 1940 of this chapter for applicable environmental requirements including subpart LL of part 2000 of this chapter for assistance in implementation.

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in §1940.406 of subpart I of part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with title V of Pub. L. 93–495, the Equal Credit Opportunity Act, the FmHA or its successor agency under Public Law 103–354 will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing building construction, diverting, appropriating, and using water, including use for domestic purposes; installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

[53 FR 35692, Sept. 15, 1988, as amended at 62 FR 9356, Mar. 3, 1997]

§ 1943.24 Special requirements.

(a) *Determining whether a farm will permit a feasible plan.* The County Supervisor is responsible for making a preliminary determination as to whether a loan should be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm, roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a specialized farm operation, and development needed to make it acceptable for the planned operation of the farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's farm. Exceptions of this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully, it will not be necessary to provide a dwelling on the farm.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable

buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home, the applicant will not be required to build a dwelling. A mobile home will not be considered to add value to the farm but FO funds may be used to finance anchoring the home.

(2) When loan funds are needed for a dwelling and an applicant is eligible for a Rural Housing (RH) loan, it will be processed simultaneously with the FO loan. However, in such cases if a small amount is needed for dwelling improvements, FO funds may be used. Dwellings financed with RH funds will meet the requirements for such loans as provided in subpart A of part 1944 of this chapter.

(c) *Land and facility development.* Development needed to make the farm ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be included in the development plan and the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(d) *Insurance.* (1) Insurance must be obtained on any property acquired with, or serving as primary security on an FO loan in accordance with subpart A of part 1806 of this chapter.

(2) Applicants must comply with the catastrophic risk protection insurance (CAT) requirement by either:

(i) Obtaining at least the available CAT level of coverage for each crop of economic significance, as defined by the Federal Crop Insurance Corporation, or

(ii) Waiving eligibility for emergency crop loss assistance in connection with

the uninsured crop. FSA emergency (EM) loss loan assistance is not considered emergency crop loss assistance for the purpose of the crop insurance waiver on the uninsured crop.

(3) See §1943.23(a) of this subpart for information about flood or mudslide hazard areas.

(e) *Income from other than owned acreage.* When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary to determine that:

(1) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(2) Any off-farm employment the applicant depends on is likely to continue.

(f) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm;

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(g) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county or parish, the loan will be processed and serviced in the State, county or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the FO loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is

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located unless otherwise approved by the State Director.

(h) *Subdivision of large tracts of farmland, other than FmHA or its successor agency under Public Law 103-354 inventory farms, into family farm units.* County Supervisors should investigate any large tract that is offered for sale to determine the feasibility of making FO loans to enable several applicants to acquire the tract. In considering the feasibility of a tract for subdivision into family farms, the following are some of the factors that must be considered:

- (1) Productivity of the land and its suitability for operation as a family farm;
- (2) Cost of the land and improvements;
- (3) Accessibility to roads, markets, schools, right-of-way, easements, and other services.
- (4) Disposition or omission of any part of the tract that is not suitable; and
- (5) The number of eligible applicants in the area.

(i) *Lien junior to the FmHA or its successor agency under Public Law 103-354 lien.* A loan will not be approved if a lien junior to the FmHA or its successor agency under Public Law 103-354 lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the FO loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts against the farm, unless the total debt against the security would be within its market value.

(j) *Graduation of FO borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area, the borrower will, upon request, apply for and accept such financing. A borrower paying a rate of interest less than the mar-

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ket rate will be expected to pay the current rate when able to do so.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18678, Apr. 30, 1992; 58 FR 26681, May 5, 1993; 59 FR 25801, May 18, 1994; 62 FR 9356, Mar. 3, 1997]

§ 1943.25 Options, planning, and appraisals.

(a) *Optioning land.* an applicant is responsible for obtaining options on real property bought. Form FmHA or its successor agency under Public Law 103-354 440-34, "Option to Purchase Real Property," should be used if possible. Other forms may be used if acceptable to all parties concerned and to FmHA or its successor agency under Public Law 103-354. When an FmHA or its successor agency under Public Law 103-354 form is not used, a provision should be included which makes the option contingent upon the FmHA or its successor agency under Public Law 103-354 making a loan to the buyer.

(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:

- (i) Land description and number of acres;
- (ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;
- (iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm;
- (iv) Access to the land or any part of it;
- (v) The party responsible for taxes and insurance; and
- (vi) The party who will receive the income from the land during the crop year of the transaction.

(2) The applicant should decide if the applicant wants the option recorded and is responsible for paying any recording fees.

(b) Farm business plans will be completed as provided in subpart B of part 1924.

(c) *Appraisals.* (1) Except as provided in paragraph (c)(2) of this section, real estate appraisals will be completed on forms in accordance with § 761.7 of this title, and in the case of an appraisal of

residential real estate, the appropriate Agency form (available in each Agency State Office) or other format that contains the same information, by a designated FmHA or its successor agency under Public Law 103-354 real property appraiser, or FmHA or its successor agency under Public Law 103-354 State-certified general contract real property appraiser. Appraisals are necessary when real estate is taken as primary security, as defined in §1943.4 of this subpart, and when loans are serviced in accordance with subpart S of part 1951 of this chapter. Real estate appraisals are not required when real estate is taken as additional security, as defined in §1943.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(2) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (c)(4) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA or its successor agency under Public Law 103-354 designated review appraiser.

(3) Real estate appraisals will be completed as provided in §761.7 of this title. The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security for Farmer Programs loans and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA or its successor agency under Public Law 103-354 1922-11, "Appraisal for Mineral Rights" or other format that contains the same information.

(4) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the real estate, provided:

- (i) An assignment is obtained on the stock, or
- (ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA or its successor agency under Public Law 103-354, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(5) In the case of nonreal estate security the following items apply:

(i) Form FmHA or its successor agency under Public Law 103-354 440-21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value, or if appropriate, the current cash value will be determined.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 47959, Nov. 20, 1989; 58 FR 26681, May 5, 1993; 59 FR 16773, Apr. 8, 1994; 62 FR 9356, Mar. 3, 1997; 64 FR 62568, Nov. 17, 1999]

§ 1943.26 Planning and performing farm development.

The development work will be planned and completed in accordance with subpart A of part 1924 of this chapter. The provisions of subpart E of part 1901 of this chapter will be met in connection with FO loans involving recreational enterprises and the construction of buildings.

§ 1943.27 Relationship with other lenders.

An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an FO loan, consideration will be given to a participation loan. FmHA or its successor agency under Public Law 103-354 employees may not guarantee, personally or for FmHA or its successor agency under Public Law 103-354, repayment of advances made from other credit sources. However, lenders

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may be assured that lien priorities will be recognized.

§ 1943.28 FmHA or its successor agency under Public Law 103-354 loans simultaneous with other lenders.

(a) FmHA Guide Letter 1943-A-1 (available in any FmHA or its successor agency under Public Law 103-354 office), will serve as a guide in executing MOUs with State Beginning Farmer programs by which FO loans will be made simultaneously with loans by any State Beginning Farmer program. Subpart R of part 2000 of this chapter, "Memorandum of Understanding FHA or its successor agency under Public Law 103-354-FCA," (available in any FmHA or its successor agency under Public Law 103-354 office) will serve as a guide in processing FO loans to be made simultaneously with loans by FLB to a common applicant. State Directors may work out agreements for simultaneous loans with long-term lenders other than FLBs for eligible loan purposes. Such an agreement should prohibit future advances by the first mortgage holder except for taxes, property insurance, reasonable maintenance expenditures, and reasonable foreclosure costs, but should not prohibit subsequent FmHA or its successor agency under Public Law 103-354 loans. It should also cover items such as appraisal methods, title clearances, loan closing, the disbursement of funds and, when appropriate, advance notice of foreclosure. It may also cover other items considered necessary or advisable for a sound FmHA or its successor agency under Public Law 103-354 junior lien loan.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an FO loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA or its successor agency under Public Law 103-354 lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: advances for payment of taxes, property insurance, reasonable maintenance to protect the security,

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and reasonable foreclosure costs including attorney's fees.

[53 FR 35692, Sept. 15, 1988, as amended at 58 FR 48288, Sept. 15, 1993]

§ 1943.29 Relationship between FSA loans, direct and guaranteed.

(a) Direct FO loans may be made simultaneously with other FmHA or its successor agency under Public Law 103-354 loans, and to borrowers presently indebted to FmHA or its successor agency under Public Law 103-354, when the loan limits will *not* be exceeded and all requirements of the loans involved will be met.

(b) A direct FO may be made to a guaranteed loan borrower provided the requirements of 7 CFR 761.8 and all other loan requirements are met.

(c) A borrower may use the same collateral to secure two or more loans, direct or guaranteed, under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21528, May 25, 1990; 58 FR 44747, Aug. 25, 1993; 58 FR 48282, 48288, Sept. 15, 1993; 61 FR 35925, July 9, 1996; 66 FR 7568, Jan. 24, 2001]

§§ 1943.30-1943.32 [Reserved]

§ 1943.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by subpart A of part 1901 of this chapter provided:

(1) The total debt including the loan(s) being made (unpaid principal and past due interest) against the security will not exceed the market value of the security.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in §1910.4 of subpart A of part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the

loan approval official will determine that:

- (i) The Agency has certified the applicant eligible.
- (ii) Funds are requested for authorized purposes.
- (iii) The proposed loan is based on a feasible plan. Planning forms other than Form FmHA or its successor agency under Public Law 103-354 431-2 may be used when they provide the necessary information.
- (iv) The security is adequate.
- (v) Necessary supervision is planned, and
- (vi) All other pertinent requirements have been met or will be met.

(2) [Reserved]

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18678, Apr. 30, 1992; 61 FR 35926, July 9, 1996]

§ 1943.34 Requesting title service and accepting option.

(a) The County Supervisor will request the applicant to obtain title clearance as provided in subpart B of part 1927 of this chapter, when required, if this has not been done.

When the loan is approved, the following action will be taken:

(b) The applicant will sign Form FmHA or its successor agency under Public Law 103-354 440-35, "Acceptance of Option," and send the original to the seller if land is being acquired. A copy will be kept in the case folder.

(c) The applicant will arrange with the seller to take possession when land is being acquired.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 47959, Nov. 20, 1989; 56 FR 67481, Dec. 31, 1991]

§ 1943.35 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the field office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the field office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no

funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing of if the amount of funds that cannot be disbursed does not exceed \$5,000, the total amount of the loan will be requested in a single advance.

(2) When loans funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the field office terminal system. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA or its successor agency under Public Law 103-354 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with subpart A of part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 2018-D, a copy of which may be obtained from any FmHA or its successor agency under Public Law 103-354 office. The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

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(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 2018–D.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled:

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA or its successor agency under Public Law 103–354 1940–10, “Cancellation of U.S. Treasury Check and/or Obligation.” The County Office will send a copy of Form FmHA or its successor agency under Public Law 103–354 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office).

(2) Interested parties will be notified of the cancellation as provided in subpart B of part 1927 of this chapter.

(d) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions;

(1) Complete and distribute Form FmHA or its successor agency under Public Law 103–354 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA or its successor agency under Public Law 103–354 440–57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memo-

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randum will be attached to the revised forms and sent to the State Office.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 39727, Sept. 28, 1989; 56 FR 67481, Dec. 31, 1991; 59 FR 54788, 54789, Nov. 2, 1994]

§§ 1943.36–1943.37 [Reserved]

§ 1943.38 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing.

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of subpart B of part 1927 of this chapter except as modified for loans of \$10,000 or less in § 1943.19 (a)(6).

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in subpart B of part 1941 of this chapter for operating loans. The following forms will be used for chattel security:

(1) Form FmHA or its successor agency under Public Law 103–354 440–15, “Security Agreement (Insured Loans to Individuals).”

(2) Form FmHA or its successor agency under Public Law 103–354 440–25, “Financing Statement” or, when authorized, Form FmHA or its successor agency under Public Law 103–354 440–A25, “Financing Statement.”

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant’s financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant’s financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant’s financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan

requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so, and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out, and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter.

(1) For assignment of income, Form FmHA or its successor agency under Public Law 103-354 443-16, "Assignment of Income from Real Estate Security," will be used, except if it is legally inadequate in a State it may be adapted to

that State with the approval of the OGC or an authorized State Form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA or its successor agency under Public Law 103-354 443-16 is executed, appropriate notations will be made on Form FmHA or its successor agency under Public Law 103-354 1905-1, "Management System Card—Individual," to insure that the proceeds, or the specified portions of the proceeds assigned to FmHA or its successor agency under Public Law 103-354 from the transactions, are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA or its successor agency under Public Law 103-354 1940-17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA or its successor agency under Public Law 103-354 loan made simultaneously with the FO loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA or its successor agency under Public Law 103-354 notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) Individuals. Only the applicant(s) will sign the note as a borrower. If the co-signer is needed (see §1910.3(e) of subpart A of part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA or its successor agency under Public Law 103-354 is to incur individual personal liability regardless of any State law to the contrary.

(ii) Cooperatives or corporations. The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

(iii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as individuals.

(h) *Supplementary payment agreement.* Form FmHA or its successor agency under Public Law 103-354 440-9, “Supplementary Payment Agreement,” should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in §1943.24(d) of this subpart.

(j) *Effective time of loan closing.* An FO loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgage.

(i) When the original recorded instrument is returned to County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds.

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies.

(i) File the mortgage title policy in the County Office file, and

(ii) Give the Owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title.

(i) Return to the borrower, except that when they were obtained from a third party with understanding they will be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA or its successor agency under Public Law 103-354 140-4, “Transmittal of Documents” will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

[53 FR 35692, Sept. 15, 1988, as amended at 56 FR 67481, Dec. 31, 1991; 57 FR 18678, Apr. 30, 1992; 58 FR 48288, Sept. 15, 1993; 59 FR 25801, May 18, 1994]

§§ 1943.39–1943.41 [Reserved]

§ 1943.42 Servicing.

FO loans will be serviced in accordance with subpart A of part 1965 of this chapter and/or subpart S of part 1951 of this chapter. Chattel security for FO loans will be serviced in accordance with subpart A of part 1962 of this chapter and/or subpart S of part 1951 of this chapter.

§ 1943.43 Subsequent FO loans.

A subsequent FO loan is a loan made to a borrower who is currently in debt for an FO loan.

(a) A subsequent loan may be made for the same purpose and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage and

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause and

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with subpart A of part 1965 of this chapter.

§§1943.45–1943.49 [Reserved]**§ 1943.50 State supplements.**

State supplements will be issued as necessary to implement this subpart.

**EXHIBIT A TO SUBPART A OF PART 1943—
FARMERS HOME ADMINISTRATION OR
ITS SUCCESSOR AGENCY UNDER PUB-
LIC LAW 103-354 LOANS TO
ENTRYMEN ON UNPATENTED PUBLIC
LANDS**

I. *GENERAL*: This exhibit provides additional policies and procedures applicable to (1) insured Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 loans to homestead and desertland entrymen which are to be secured by real estate, and (2) taking of real estate mortgages on entries to secure Farm Ownership, Soil and Water, Individual Recreation, Operating, Emergency, Single Family Housing, and Farm Labor Housing loans in connection with loan making and servicing.

A. *Authority*. The authorizations contained in this exhibit clarify security and servicing for loans to entrymen and are based on Public Law 361. Attachment 1 is a Memorandum of Understanding between the Department of the Interior and the Department of Agriculture and outlines the general procedures to be followed when loans are made to entrymen. Reference to Guaranteed Loans in the Memorandum of Understanding is not applicable.

B. *Cooperation Between the Department of Agriculture and the Department of the Interior*. The extension of financial assistance and taking of real estate mortgages authorized in paragraph I A will be facilitated through the cooperation of the FmHA or its successor agency under Public Law 103-354, the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), as provided in the Memorandum of Understanding.

C. *Special Policies Applicable to Dwellings, Land Improvement and Ownership*. An FmHA or its successor agency under Public Law 103-354 loan will not be made to an applicant who lacks the capital or who cannot obtain credit to provide (1) any required habitable dwellings within the statutory period specified in paragraph I D for the establishment of residence, and (2) land development sufficient for success but in no case less than that necessary to meet the entry requirements. The Notice of Allowance of Entry is adequate to meet the ownership requirement until the patent is issued.

D. *Patent Requirements*. All entrymen will be expected to keep in contact with appropriate officials of the BLM, and BR and comply with pertinent laws and regulations of these Agencies relating to the issuance of patents for homestead or desertland entries.

When applicable, reclamation proof must be filed by the borrower at the earliest possible date. Likewise, FmHA or its successor agency under Public Law 103-354 personnel concerned with making and securing FmHA or its successor agency under Public Law 103-354 loans to entrymen should acquaint themselves with BLM and BR representatives and keep informed of their regulations relating to the issuance of patents for homestead or desertland entries, including but not limited to the following:

1. *RESIDENCE AND DEVELOPMENT REQUIREMENTS*. A homestead entryman must establish residence upon the tract entered within 6 months after date of the entry unless an extension of time is allowed and must maintain a residence there for 3 years. The entryman should notify the authorized officer of the BLM upon establishing residence. When an FmHA or its successor agency under Public Law 103-354 loan is made for any purpose, the requirements of the applicable FmHA or its successor agency under Public Law 103-354 regulations must be met. Likewise any residence or development requirements of BLM or BR will be met.

2. *FINAL PROOF*. Specific requirements for final proof for homestead entrymen is found in 43 CFR 2515.7 and final proof for desertland entrymen is found in 43 CFR 2521.6.

a. *Homestead Entryman*: Final proof must be filed within 5 years from the date of allowance of entry. A patent will not be issued until the entryman has submitted final proof. Final proof must show that (1) a habitable dwelling is on the land at the time proof is submitted, (2) residence requirements have been met, (3) the improvements are of such character as to show good faith, and (4) the entryman is a citizen of the United States. When the entryman is ready to submit final proof the entryman should notify the BR and request instructions regarding the procedure to be followed.

b. *Desertland Entryman*: Final proof must be made within 4 years from the date of entry. General requirements of the BLM that must be met include: (1) Filing a map at the initiation of the entry showing the method of irrigation and the proposed source of water supply, (2) an annual expenditure for 3 years of not less than \$1 for each acre in the necessary development of the land, (3) filing a map at the end of the third year showing the character and extent of improvements, and (4) yearly proof of expenditures containing statements of two or more credible witnesses who have knowledge that the expenditures were made.

The County Supervisor should consult the BLM official for any additional requirements of the entryman such as preparing a notice of intention to make final proof, publication of final proof and submission of final proof.

3. RECLAMATION PROOF. Reclamation proof for homestead entryman may be submitted with, or at any time after, the submission of homestead proof. In addition to the final homestead proof mentioned in paragraph I D 2, the filing of reclamation proof is required as a condition for obtaining a patent to any entry within a reclamation project. Reclamation proof must show reclamation and cultivation of at least one-half of the irrigable area in the entry for 2 years immediately preceding the date of submission of proof and the payment of all reclamation charges due at that time. Reclamation proof, in proper form, must be submitted to the official in charge of the project accompanied by the payment of final homestead commissions.

II. LOAN PROCESSING: When making an FmHA or its successor agency under Public Law 103-354 loan to be secured by the entryman's land, existing FmHA or its successor agency under Public Law 103-354 policies, procedures, and loan authorities applicable to the particular type of loan will be met, except as follows:

A. *Applications.* 1. APPLICATIONS FROM ENTRYMEN NOT IN A FEDERAL RECLAMATION PROJECT. An application for an FmHA or its successor agency under Public Law 103-354 loan from an entryman with respect to public land not within a Federal reclamation project will be considered only after the entryman has selected a farm and received the Notice of Allowance of Entry from BLM. The original or a copy of the document showing allowance of entry must be attached to Form FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA or its successor agency under Public Law 103-354 Services."

2. APPLICATIONS FROM ENTRYMEN IN A FEDERAL RECLAMATION PROJECT. An application for an FmHA or its successor agency under Public Law 103-354 loan from an entryman with respect to public land within a Federal reclamation project will not be considered until after the entryman has received a Certificate of Eligibility from BR and has selected a farm. If at the time of making application the entryman has received the Notice of Allowance of Entry from BLM, he will attach the original or a copy of such document to Form FmHA or its successor agency under Public Law 103-354 410-1. If the entryman has not received the Notice of Allowance of Entry, a copy of the Certificate of Eligibility must be attached to the FmHA or its successor agency under Public Law 103-354 application. However, the docket will not be approved until the original or a copy of the document showing Notice of Allowance of Entry has been received from the applicant and placed in the loan docket.

3. SUPPLEMENTAL INFORMATION ON APPLICANT. At the time of making applica-

tion for an FmHA or its successor agency under Public Law 103-354 loan to be secured by real estate, the entryman may be requested to authorize the FmHA or its successor agency under Public Law 103-354 to obtain from BLM or BR any available information concerning the entryman's application for homestead, desertland, or reclamation entry for use by the FmHA or its successor agency under Public Law 103-354 in determining the entryman's eligibility for the loan as provided in the Memorandum of Understanding.

B. *Special Items in Development of Loan Dockets for Loans to be Secured by the Entryman's Land.* Loan dockets for loans to entrymen will be prepared and distributed in accordance with the applicable FmHA or its successor agency under Public Law 103-354 regulations, except as modified by this paragraph.

1. DEVELOPMENT PLAN. An extra copy of Form FmHA or its successor agency under Public Law 103-354 1924-1, "Farm Development Plan" will be prepared and sent to BLM in each case. When the entryman's farm is located in a Federal reclamation project, any development items listed on Form FmHA or its successor agency under Public Law 103-354 1924-1 must be consistent with the overall plans for development of the reclamation project. Consequently, when Form FmHA or its successor agency under Public Law 103-354 1924-1 provides for the leveling of land or the installation of farm distribution and surface drainage systems another extra copy will be prepared and sent to the Reclamation Project Officer as soon as the County Supervisor determines that there is a reasonable likelihood that the loan will be made. If Form FmHA or its successor agency under Public Law 103-354 1924-1 conflicts with the overall BR plans for the development of the Federal reclamation project, officials of the BR will so advise the County Supervisor. The processing of the loan will not be delayed while awaiting such advice from BR but the FmHA or its successor agency under Public Law 103-354 loan will not be closed until Form FmHA or its successor agency under Public Law 103-354 1924-1 is revised to make it consistent with the BR plans. The County Supervisor will advise the Project Officer or Authorized Officer in writing whenever changes are made in the plans approved by the FmHA or its successor agency under Public Law 103-354.

C. *Title Clearance.* 1. The entryman applicant will be required to furnish and pay for a certified statement prepared by a qualified title examiner or abstractor or as otherwise required by a State supplement which will include finding with respect to any outstanding land leveling contracts and any other claims of any kind on record against the entry. This certified statement will be included in the loan docket. Where there is

an outstanding land leveling contract, the applicant's copy of such contract also will be included in the loan docket and returned to the borrower when the loan is closed.

2. The State Director, upon advice from the Office of the General Counsel, will inform the County Supervisor regarding the acceptable form of certified statement required in paragraph II C 1.

D. *Loan Closing.* Except as provided by this exhibit, FmHA or its successor agency under Public Law 103-354 loans will be closed in accordance with the applicable FmHA or its successor agency under Public Law 103-354 regulation.

1. **REAL ESTATE MORTGAGE FORMS.** Whenever the entry is located within a Federal reclamation project two extra copies of Form FmHA or its successor agency under Public Law 103-354 1927-1, "Real Estate Mortgage," will be prepared. If the entry is not within a Federal reclamation project, one extra copy of the real estate mortgage will be prepared. After the loan has been closed, a conformed copy of the real estate mortgage will be sent to BLM and, if the entry is located in a Federal reclamation project, a conformed copy of the mortgage also will be sent to the BR. The entryman's serial number which appears on the original document showing Notice of Allowance of Entry will be typed on the original, and the conformed copies of the Mortgage for BLM and BR will indicate the date and place of recordation and the book and page numbers.

2. **COUNTY OFFICE RECORD OF ALLOWANCE OF ENTRY.** When the loan is closed a copy will be made of the original document showing Notice of Allowance of Entry for the borrower's county office case folder, unless a copy was furnished. The County Supervisor will sign the following certification which will be typed on this copy:

"I hereby certify that this is an exact copy of the Notice of Allowance of Entry issued by the BLM to _____ (Entryman's Name) residing at _____ (Entryman's Address)"

County Supervisor

When the original document showing allowance of entry is furnished, it will be returned to the borrower.

3. **ENTRIES REQUIRED ON MANAGEMENT SYSTEM CARDS.** Upon closing the loan, the County Supervisor will enter a notation on the borrower's Management System Card (Form FmHA or its successor agency under Public Law 103-354 405-1) as to the date when the borrower must submit final proof to the BLM in fulfillment of the requirements to obtain a patent. If residence has not been established, a notation also will be made on the Management System Card of the date such residence must be commenced. It will be the responsibility of the County

Supervisor to follow through to see that the borrower completes these actions.

III. **MORTGAGE ON REAL ESTATE FOR ADDITIONAL SECURITY.** When it is deemed advisable to take a mortgage on the homestead or desertland entry as additional security or to otherwise protect the interests of the FmHA or its successor agency under Public Law 103-354, a real estate mortgage will be taken on such entry. The mortgage will be taken as authorized in subpart A of part 1965 of this chapter (FmHA Instruction 465.1). In such a case, a copy of the real estate mortgage will be sent to BLM and, if the farm is located in a Federal reclamation project, a copy of the mortgage also will be sent to the BR.

IV. **DEFAULT AND DISPOSAL OF UNITS:** The County Supervisor will coordinate with the local BLM and BR representatives and keep the State Director currently advised on any cases in default or where default is anticipated. The State Director will be guided by Attachment I and advice of the Office of the General Counsel in fulfilling FmHA or its successor agency under Public Law 103-354's responsibilities for disposal of any units on which a patent has not been issued. Units on which a patent has been issued will be serviced by applicable FmHA or its successor agency under Public Law 103-354 procedures.

ATTACHMENT I

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF THE INTERIOR RELATING TO FINANCIAL ASSISTANCE BY THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 TO ENTRYMEN ON PUBLIC LANDS

PART I—PURPOSE AND DEFINITIONS

A. *Purpose.* The purpose of this memorandum is to outline the general procedure to be followed by the Farmers Home Administration (FHA) or its successor agency under Public Law 103-354, the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), when FHA or its successor agency under Public Law 103-354 extends financial assistance to entrymen on unpatented public lands, including public land in reclamation projects.

B. *Definitions.* Unless otherwise indicated in this memorandum:

(1) The term *unit* will be used to describe an adequate family farm, less than adequate family farm, a portion of a farm or any other tract of land.

(2) The term *FHA* also includes its insured lenders and guaranteed lenders.

(3) The term *outstanding balance* includes (a) the unpaid indebtedness under the FHA or its successor agency under Public Law 103-354 mortgage, (b) any unpaid costs owed

to BR for construction by it of a special distribution system to serve a unit where such costs have been allocated to the unit as a separate item, and (c) any portion of an SW association loan made by FHA or its successor agency under Public Law 103-354 for construction of a domestic water system to serve the unit and secured by a lien on the unit. It does not include any portion of an SW association loan made by the FHA or its successor agency under Public Law 103-354 for construction of a domestic water system to serve the unit and not secured by a lien on the unit, nor project construction costs charged to the unit.

(4) Pub. L. 361, 81st Congress (7 U.S.C. 1006a and 1006b), is referred to as "Pub. L. 361." It applies to Farm Ownership (FO), Operating (OL), Soil and Water Conservation (SW) loans made to individuals and Recreation (RL) loans to individuals under the Consolidated Farm and Rural Development Act of 1972 (7 U.S.C. 1921) and prior laws. It does not apply to Emergency (EM) loans made under that act or prior laws, nor to Housing (RH) loans made under Title V of the Housing Act of 1949 (42 U.S.C. 1471), or to any other loans made or administered by FHA or its successor agency under Public Law 103-354.

(5) Pub. L. 419 (86 Stat. 675) amended Pub. L. 361 to add desertland entrymen as eligible for the same loans as indicated in (4) above.

(6) The term *Project Officer* refers to the BR Officer who may properly hold the requisite responsibility for the project or area in question.

(7) The term *authorized officer* refers to the BLM Officer to whom has been delegated the required responsibility for the area in question.

(8) The term *County Supervisor* means County Supervisor for FHA or its successor agency under Public Law 103-354.

(9) The term *State Director* means State Director for FHA or its successor agency under Public Law 103-354.

PART II—GENERAL PROVISIONS

A. FHA or its successor agency under Public Law 103-354 regulations will govern making and servicing FHA or its successor agency under Public Law 103-354 loans, including the taking of mortgages as additional security for existing FHA or its successor agency under Public Law 103-354 loans.

B. In connection with applications for FHA or its successor agency under Public Law 103-354 loans or credit sales to eligible applicants, the Project Officer of BR or the authorized officer of BLM, upon written request of the County Supervisor, will furnish the following:

1. Written consent to make the applicant an FHA or its successor agency under Public Law 103-354 loan or to secure an existing FHA or its successor agency under Public Law 103-354 loan.

2. Any information which BR or BLM has concerning the applicant, provided, in the case of BR information, the request has the following authorizations attached to it:

Date _____, 19____

I hereby authorize the Bureau of Reclamation to make available to the Farmers Home Administration or its successor agency under Public Law 103-354 any information the Bureau may have concerning my transactions with it. This information may be used by the Farmers Home Administration or its successor agency under Public Law 103-354 in determining my eligibility and qualifications for a loan, and is to be treated as confidential.

(Type name of applicant below signature)

signed _____
(applicant)

signed _____
(spouse)

3. A statement of account, showing the applicant's outstanding balance if there is a debt owed to BR (principal balance, accrued unpaid interest, and daily interest accrual rate, any other charges and any unpaid special distribution system costs, and the amount, delinquent).

4. A report on any development and residence requirements which have not been completed and on eligibility of the unit for water, including full information on the status of any excess land.

5. Advice as to whether the applicant is in default because of failure to pay water charges, or because of breach of any other agreements with the Bureau of Reclamation.

C. A homestead or desertland entryman on public land not in a reclamation project may apply to the County Supervisor for an FHA or its successor agency under Public Law 103-354 loan when his entry has been allowed. The original or a copy of the Notice of Allowance of Entry from BLM must be attached to the application for a loan from FHA or its successor agency under Public Law 103-354. Upon request of the County Supervisor, the authorized officer of the BLM, to the extent applicable will furnish any information that office has with respect to the applicant entryman.

An applicant for a homestead on a reclamation project likewise may apply to the County Supervisor for an FHA or its successor agency under Public Law 103-354 loan when he has received from the BR a Certificate of Eligibility and has selected a unit. A copy of the Certificate of Eligibility must be attached to the application for a loan from the FHA or its successor agency under Public Law 103-354 unless the unit has been entered, in which case the Notice of Allowance of Entry will be attached to the application for a loan. Each application for such a loan filed by an entryman will be processed in

substantially the same manner as other application of a similar character, including the preparation of the loan docket, certifications by the FHA or its successor agency under Public Law 103-354 County Committee, and approval by the duly authorized loan approving official. If any conflict exists between the development plans of FHA or its successor agency under Public Law 103-354 and BR or BLM, the difference must be reconciled prior to loan closing. A copy of the Notice of Allowance of the Entry will be required in the loan docket before a loan is closed.

D. Upon closing of a loan to an entryman, when real estate security is taken, the County Supervisor will send copies of the real estate mortgage to the authorized officer of BLM, and to BR if appropriate. The County Supervisor will indicate on the mortgage the date such instrument was filed for record and the entryman's homestead or desertland entry serial number. Copies of these instruments will serve as notification to BLM or BR that a loan has been made by FHA or its successor agency under Public Law 103-354 and may be used in connection with the servicing of such loans as indicated herein.

PART III—LOAN SERVICING

A. If the entryman-borrower repays his indebtedness in full to FHA or its successor agency under Public Law 103-354 before a patent is issued to him by BLM, the County Supervisor will promptly notify the BLM authorized officer of the release of the mortgage lien.

B. When final homestead or desertland entry proof or homestead proof and reclamation proof submitted by an entryman-borrower is accepted by the BLM and a patent is issued before BLM is notified of the full repayment of the indebtedness to FHA or its successor agency under Public Law 103-354, the patent issued will make reference to the FHA or its successor agency under Public Law 103-354 mortgage as follows:

"This patent is issued subject to the rights of the United States under a certain mortgage or deed of trust executed by _____ and _____ under date of _____, 19 ____, recorded in Book _____, Page _____ of the records of the Recorder of Deeds for _____."

In such cases, if the patent is issued to a person other than the mortgager or the purchaser at foreclosure of the mortgage, there shall also be inserted after the recital of recordation of the mortgage the following words: "Which the patentee assumes and agrees to pay."

C. Upon issuance of the patent to the entryman-borrower, the authorized officer of BLM will notify the State Director that the patent has been issued and mailed to the entryman-borrower. Upon such notification, the County Supervisor will advise the

entryman-borrower to record the patent promptly in the real estate records in the county in which his unit is located, and will check the records to determine that the recordation has been accomplished. The issuance of the patent will terminate any further relationship between BLM and FHA or its successor agency under Public Law 103-354 insofar as the entryman-borrower is concerned.

D. In the event that an entryman-borrower has not submitted Final Proof within the statutory period from the date of allowance of his entry, BLM will send to the County Supervisor a copy of the Notice of Expiration of the statutory period of entry when it is mailed to the entryman-borrower. The copy of the notice will be used by the County Supervisor in urging the entryman-borrower to submit final proof with appropriate explanation of his failure to do so before the expiration of the statutory period.

PART IV—DEFAULTS

When an entryman-borrower is in default in the terms of his mortgage to FHA or its successor agency under Public Law 103-354, in complying with requirements to obtain a patent, or in meeting the requirements to make reclamation proof, the following procedures will apply:

A. *Default on Mortgage.* BLM will issue a decision canceling any entry upon which there is an FHA or its successor agency under Public Law 103-354 mortgage when so requested in writing by the State Director. FHA or its successor agency under Public Law 103-354 may request a cancellation whenever any default occurs in the terms, conditions, covenants, and obligations contained in the mortgage. Included among the terms, conditions, covenants, and obligations in the mortgage taken by FHA or its successor agency under Public Law 103-354 will be the provision that the entryman-borrower must comply with the legal and administrative regulations for the issuance of a patent and, if the entry is located in a reclamation project, with the legal and administrative regulations for making reclamation proof.

1. The State Director will furnish the authorized officer of BLM with an explanation of the need for cancellation. When the entry is located in a reclamation project, the State Director also will notify the BR Regional Director and furnish him with an explanation of the need for cancellation.

2. The BR Regional Director may request the State Director to reconsider the necessity for cancellation of the entry when (a) BR can furnish information which may not have been considered by FHA or its successor agency under Public Law 103-354, (b) there is an outstanding contract between BR and the entryman borrower for the repayment of charges for land leveling, or (c) the

entryman-borrower has not made reclamation proof. If such a request is made, a copy will be furnished to the BLM which shall suspend action on the FHA or its successor agency under Public Law 103-354 request until further notified by the FHA or its successor agency under Public Law 103-354. Ordinarily, BR will not request a reconsideration of the necessity for cancellation unless there appears to be a reasonable basis upon which a solution can be worked out so that the entryman-borrower may retain possession of his unit.

3. If BR does not ask the State Director to reconsider his request to cancel within 30 days, BLM will issue a decision cancelling the entry.

4. If BR asks for a reconsideration of the request to cancel, it will furnish the State Director immediately new information which it believes should be considered by FHA or its successor agency under Public Law 103-354 in reaching a decision. When FHA or its successor agency under Public Law 103-354 has reached a final decision, it will notify the BLM and the BR of the decision reached. Within 30 days after receiving notice of the final decision of the State Director that the entry should be canceled, BLM will notify the entryman-borrower of the cancellation of his entry in accordance with the usual procedure. A copy of the notice of the cancellation will be mailed to the State Director at the same time.

B. Default in Meeting Entry Requirements. If BLM proposes to take any action toward cancellation of an entryman-borrower's entry, it will notify the State Director and the BR Regional Director if the unit is located in a reclamation project, in writing at least 30 days before any action is commenced. The notification will be accompanied by an explanation as to why cancellation will be made. Within the 30-day period either or both FHA or its successor agency under Public Law 103-354 and BR may present any new information for the consideration of the BLM in reaching a decision to, or not to, cancel the entry. When BLM has reached a final decision, it will inform the State Director and the BR Regional Director.

C. Default in Meeting Reclamation Requirements. In the event BR intends to recommend cancellation of an entryman-borrower's entry, the Superintendent of the Reclamation Project will notify the State Director in writing at least 30 days before such recommendation is to be submitted to BLM for cancellation. The notification will be accompanied by an explanation as to why cancellation of entry is to be requested. FHA or its successor agency under Public Law 103-354 may request a reconsideration of BR's intended recommendation to cancel within the 30-day period and will furnish any new information which it believes should be consid-

ered by BR when reaching a final decision. When BR has reached a final decision, it will notify the State Director.

PART V—DISPOSAL OF UNITS AFTER CANCELLATION OR RELINQUISHMENT

After cancellation or relinquishment of an entry upon land on which FHA or its successor agency under Public Law 103-354 holds a mortgage, such land shall be opened to re-entry only to persons eligible for an original entry, and eligible for an FHA or its successor agency under Public Law 103-354 loan unless the FHA or its successor agency under Public Law 103-354 Loan is paid in full. Any unit disposed of hereunder shall be subject to the outstanding balance owed to FHA or its successor agency under Public Law 103-354 and BR, or to that portion of the outstanding balance as agreed upon by the FHA or its successor agency under Public Law 103-354 and BR or BLM, as appropriate, if the entryman is eligible for an FHA or its successor agency under Public Law 103-354 loan.

A. One Year Limit. Under Pub. L. 361, BLM or BR can permit a new entry only during one year after cancellation or relinquishment of the old entry where the FHA or its successor agency under Public Law 103-354 mortgage is subject to Pub. L. 361 (FO, OL, and SW). In other cases such as RH and EM, the one-year limitation does not apply, but BLM or BR will nevertheless arrange for a new entry within the one-year period if it is practicable to do so.

B. Custody and Expenses. While BLM or BR has disposal authority it will assume custodial responsibility for the unit, but the County Supervisor and the Project Officer will determine the actions necessary to protect the interests of both FHA or its successor agency under Public Law 103-354 and BLM or BR. Any expenses incurred for protection of FHA or its successor agency under Public Law 103-354's interest will be paid by FHA or its successor agency under Public Law 103-354 and added to the mortgage debt.

C. Disposal of Units—1. Within a Reclamation Project. As soon as possible, after cancellation or relinquishment, FHA or its successor agency under Public Law 103-354 will make an appraisal to determine the value of the property and will report its findings to BR on appropriate FHA or its successor agency under Public Law 103-354 appraisal forms. The State Director and the BR Regional Director after receipt of the report by BR will jointly participate in determining the amount of indebtedness owed to the United States which shall be required in accordance with the existing law to be paid and the terms under which repayment will be made.

a. BR will, thereafter, for that particular unit, proceed to inform the public of the availability of the unit in accordance with its established procedures. However, before BR issues a Certificate of Eligibility to any

applicant for re-entry it will submit to the County Supervisor (a) a list of the names of the applicants who can qualify for a Certificate of Eligibility and the order in which such applicants shall be considered, and (b) the information submitted by each of the qualified applicants in support of his application for the entry.

b. The County Supervisor and the County Committee will examine the list and the information to determine which of the applicants are eligible for an FHA or its successor agency under Public Law 103-354 loan. The list of any documentary information furnished will be returned to BR with a written statement setting forth the names in the list which are eligible for FHA or its successor agency under Public Law 103-354 assistance. Upon receiving such information from FHA or its successor agency under Public Law 103-354, BR will proceed to select, in accordance with established procedures, from among the applicants determined to be eligible for a Certificate of Eligibility and an FHA or its successor agency under Public Law 103-354 loan, one applicant but not to exceed two alternate applicants, to whom the unit may be awarded upon qualifying to assume the indebtedness.

c. BR will issue a Certificate of Eligibility to the selected applicant. The Certificate of Eligibility will be sent to the FHA or its successor agency under Public Law 103-354 County Supervisor who will instruct the applicant to file his Certificate of Eligibility and application for entry with BLM which will issue a Notice of Allowance of Entry if the applicant is qualified to make entry. The applicant will be allowed to occupy the unit when he has received the Notice of Allowance of Entry and has completed arrangements to assume the required amount of indebtedness owed to FHA or its successor agency under Public Law 103-354 or to refinance such indebtedness. FHA or its successor agency under Public Law 103-354 will send a copy of the assumption agreement or note and mortgage, if any, executed by the new occupant to BR and BLM.

d. FHA or its successor agency under Public Law 103-354 may permit an eligible person to whom the unit is awarded to assume that part of the indebtedness determined to be within the value of the property.

2. *Units Not Within a Reclamation Project.* As soon as possible, after cancellation or relinquishment, FHA or its successor agency under Public Law 103-354 will make an appraisal to determine the value of the property and to determine the amount of indebtedness owed on FHA or its successor agency under Public Law 103-354 loans that is to be paid by the new entryman. The FHA or its successor agency under Public Law 103-354 will report the amount of the FHA or its successor agency under Public Law 103-354 debt to be assumed to the BLM.

a. The BLM will, thereafter, for that particular entry, proceed to inform the public of the availability of the land in accordance with its established procedures. BLM will, following the opening of the land to application, submit to the County Supervisor (a) a list of the names of the applicants who can qualify for the allowance and the order in which such applicants shall be considered, and (b) the information submitted by each of the applicants in support of his application.

b. Thereafter the FHA or its successor agency under Public Law 103-354 will select from the list the first applicant for the entry who can qualify for an FHA or its successor agency under Public Law 103-354 loan.

c. FHA or its successor agency under Public Law 103-354 will then notify BLM of the applicant selected. The authorized Officer will, as soon as possible after notification, issue the Notice of Allowance. The Allowance of Entry or an attachment thereto will show that entry is conditioned upon payment or assumption of the FHA or its successor agency under Public Law 103-354 debt. A copy of appropriate notice will be mailed to the State Director.

d. Upon receipt of the Notice of Allowance of Entry by the applicant, FHA or its successor agency under Public Law 103-354 will instruct him to occupy the unit and will complete arrangements for him to assume or refinance the indebtedness or the part thereof determined to be within the value of the property. FHA or its successor agency under Public Law 103-354 will send a copy of the assumption agreement or note and the mortgage, if any, executed by the new occupant to BLM.

e. FHA or its successor agency under Public Law 103-354 may permit an eligible person to whom the unit is awarded to assume that part of the indebtedness determined to be within the value of the property.

D. *Disposal of Units By Farmers Home Administration or its successor agency under Public Law 103-354.* 1. If no entry is allowed within one year after cancellation or relinquishment of a prior entry on which FHA or its successor agency under Public Law 103-354 holds a mortgage and the property was security for an FHA or its successor agency under Public Law 103-354 loan subject to Pub. L. 361 even though it also was security for a loan not subject to that law, FHA or its successor agency under Public Law 103-354 will dispose of the unit in accordance with the FHA or its successor agency under Public Law 103-354 regulations. If the unit is located on a reclamation project, such disposition shall be subject, however, to outstanding reclamation charges on the land due the United States.

2. If the property cannot be sold immediately, the FHA or its successor agency under Public Law 103-354 will arrange for a

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lease or caretaker agreement as necessary to protect the Government's interests.

3. When FHA or its successor agency under Public Law 103-354 prepares to sell a unit, it will also advise BLM or BR, as appropriate, of the name of the purchaser and will request issuance of a patent to the purchaser. If the unit is in a reclamation project, BR will furnish, as soon as possible to FHA or its successor agency under Public Law 103-354, information concerning any outstanding reclamation charges on the land due the United States.

4. The sale may be for cash or on credit. In the event the sale is on credit, FHA or its successor agency under Public Law 103-354 will furnish a copy of the mortgage to BLM or BR, as appropriate, which shall make reference, in any patent issued thereafter, to the outstanding mortgage of FHA or its successor agency under Public Law 103-354.

This memorandum of understanding supersedes the earlier memorandum of understanding signed on February 17, 1950, and March 25, 1950, respectively, by the Secretaries of Agriculture and Interior.

Approved:

JACK O. HORTON,
Assistant Secretary of the Interior.

Date: October 22, 1974.

Approved:

WILLIAM ERWIN,
Assistant Secretary of Agriculture.

Date: December 16, 1974.

[43 FR 55895, Nov. 29, 1978, as amended at 51 FR 4136, Feb. 3, 1986; 52 FR 8035, Mar. 13, 1987; 56 FR 67481, Dec. 31, 1991]

**EXHIBIT B TO SUBPART A OF PART 1943—
TARGET PARTICIPATION RATES FOR
FARMERS HOME ADMINISTRATION
(FmHA) OR ITS SUCCESSOR AGENCY
UNDER PUBLIC LAW 103-354 DIRECT
FARM OWNERSHIP (FO) LOANS TO
MEMBERS OF SOCIALLY DISADVANTAGED GROUPS**

I. General

The Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 is statutorily required to establish target participation rates for providing direct Farm Ownership (FO) loan funds to members of socially disadvantaged groups. These rates are established to ensure that members of socially disadvantaged groups are provided access to direct FO loan funds to purchase suitable farmland. The target participation rate established for each state, and each county within the state, is based on the proportion of minority rural population to the total rural population in the state, and for each county within the state.

II. Implementation Responsibilities

States will meet their target participation rates in use of direct FO loan funds as provided in this exhibit. The targeted portion of a state's fiscal year direct FO allocation, as outlined in exhibit A of subpart L of part 1940 of this chapter, will be used exclusively to enable members of socially disadvantaged groups to purchase suitable farmland. Additional funds will be available from the National Office Reserve to enable States to obligate loans for socially disadvantaged applicants should their targeted allocation be insufficient. This requirement does not prohibit States from using their allocation of regular direct FO funds for making loans to members of socially disadvantaged groups.

III. Other Information

The National Office will provide each State Director with a list of the target participation rates for each county by October 1 of each year. State Directors shall make available to each County and District Office the county(ies) target participation rates. State Directors will make every effort to provide the greater amount of direct FO loan funds to counties having the larger socially disadvantaged population.

TOTAL U.S. PARTICIPATION RATE

State	Target Participation rate (percent)
Alabama	21
Alaska	34
Arizona	39
Arkansas	13
California	20
Colorado	11
Connecticut	3
Delaware	17
Florida	14
Georgia	20
Hawaii	68
Idaho	6
Illinois	2
Indiana	1
Iowa	1
Kansas	3
Kentucky	3
Louisiana	25
Maine	1
Maryland	14
Massachusetts	2
Michigan	3
Minnesota	2
Mississippi	37
Missouri	2
Montana	8
Nebraska	2
Nevada	12
New Hampshire	1
New Jersey	8
New Mexico	57
New York	3
North Carolina	21
North Dakota	5
Ohio	2

TOTAL U.S. PARTICIPATION RATE—Continued

State	Target Participa- tion rate (percent)
Oklahoma	12
Oregon	5
Pennsylvania	2
Rhode Island	2
South Carolina	34
South Dakota	9
Tennessee	6
Texas	22
Utah	7
Vermont	1
Virginia	2
Washington	7
West Virginia	3
Wisconsin	2
Wyoming	7
U.S. Total	10

[57 FR 19524, May 7, 1992]

Subpart B—Direct Soil and Water Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 35706, Sept. 15, 1988, unless otherwise noted.

§ 1943.51 Introduction.

This subpart contains regulations for making initial and subsequent direct Soil and Water (SW) loans. It is the policy of Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103-354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103-354 employee. See exhibit A of subpart A of this part for making SW loans to entrymen on unpatented public lands. See subpart R of part 2000 of this chapter (available in any FmHA or its successor agency under Public Law 103-354

office) for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the FmHA or its successor agency under Public Law 103-354.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 227, Jan. 5, 1993; 58 FR 48282, Sept. 15, 1993]

§ 1943.52 Objectives.

The basic objective of the SW loan program is to provide credit and management assistance to eligible farmers and ranchers when credit is not available elsewhere. FmHA or its successor agency under Public Law 103-354 assistance enables farm and ranch operators to use their land resources to improve their financial conditions so that they can obtain credit elsewhere.

§ 1943.53 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve loan objectives and protect the Government's interest, in accordance with subpart B of part 1924 of this chapter.

§ 1943.54 Definitions.

Additional security. Any security beyond that which is required to adequately secure the loan.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA or its successor agency under Public Law 103-354 office.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for SW loan assistance in accordance with § 1943.62 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day

labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103-354 regulations.

(e) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103-354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103-354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103-354 debt.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term *farm* also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including

farm program payments when available, to determine that the income from the farming operation, along with any other reliable off-farm income, will provide the income necessary for the applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in §1941.14 of subpart A of part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

Fish farming. The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Indefinite parole. To verify that applicants other than citizens are legally admitted to the U.S. on the indefinite parole, such applicants must provide their Form I-94, "Immigration on Indefinite Parole" card.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Leasehold. A right to use farm property for a specific period of time under conditions provided for in a lease agreement.

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a farm, including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A lim-

ited resource applicant must meet the eligibility requirements for a soil and water loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant cannot develop a feasible plan at regular interest rates and at the maximum loan terms. The use of limited resource interest rates is restricted to those loan purposes denoted in §1943.66 (a)(1) through (a)(5) of this subpart.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership or joint operation.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term *mortgage* also refers to any security interest in chattel property.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

Primary security. Any real estate and/or chattel security which is required to adequately secure the loan. This is not to be confused with *basic security*, as defined in §1962.4 of subpart A of part 1962 of this chapter.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and

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the Commonwealth of the Northern Mariana Islands.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 15072, Mar. 19, 1993; 58 FR 26681, May 5, 1993; 58 FR 48288, Sept. 15, 1993; 62 FR 9356, Mar. 3, 1997]

§ 1943.55 [Reserved]

§ 1943.56 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103-354 guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed SW loan request can be processed by the lender for consideration by FmHA or its successor agency under Public Law 103-354.

(c) Property and interest in property owned and income received by an individual applicant; and cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and its partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

§ 1943.57 Preference.

Priority will be given to otherwise qualified applicants requesting assistance for soil and water conservation and protection purposes denoted in

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§ 1943.66(a) of this subpart who use loan funds to build conservation structures or establish conservation practices on highly erodible land to comply with part 12 of this title (see attachment 1 of exhibit M of subpart G of part 1940 of this chapter which is available in any FmHA or its successor agency under Public Law 103-354 office).

[58 FR 15072, Mar. 19, 1993]

§§ 1943.58-1943.60 [Reserved]

§ 1943.61 Receiving and processing applications.

Applications will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in exhibit M of subpart G of part 1940 of this chapter.

§ 1943.62 Soil and water loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of subpart A of part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of *controlled substance*) prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA or its successor agency under Public Law 103-354 Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States (see § 1943.54 of this subpart for the definition of *United States*) or an alien lawfully admitted to the United States for

permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS District. (See exhibit B of subpart A of part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA or its successor agency under Public Law 103-354 to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST." There is no U.S. citizenship restriction on loans made for waste pollution abatement and control facilities under § 1943.66(b) of this subpart.

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years), which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation. There is no education or experience restriction on loans made for waste pollution abatement and control facilities under § 1943.66(b) of this subpart.

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(5) Honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful infor-

mation when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar proposes and periods of time.

(7) Be the owner or operator of not larger than a family farm after the loan is closed, when loan funds are used for soil and water conservation and protection purposes as defined in § 1943.66 (a)(1) through (a)(5) of this subpart. There is no farm size restriction on loans made for waste pollution abatement and control facilities under § 1943.66(b) of this subpart.

(8) If a tenant, has a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the SW loan. In addition, the lease or separate agreement should provide for compensating the tenant for any remaining value of the improvements upon termination of the lease.

(b) A cooperative, corporation, partnership or joint operation must:

(1) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement also must be met by the individual members, stockholders, partners or joint operators. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(2) Honestly try to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance, and making every reasonable effort to carry out the conditions and terms of the proposed loan. This requirement also must be met by the individual members, stockholders, partners, or joint operators.

(3) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see §143.54 of this subpart for the definition of *United States*), or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I-151 or I-551. Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, obtainable from the nearest INS District. (See exhibit B of subpart A of part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA or its successor agency under Public Law 103-354 to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST." There is no U.S. citizenship restriction on loans made for waste pollution abatement and control facilities under §1943.66(b) of this subpart.

(4) Have sufficient applicable education and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years), which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation. There is no education or experience restriction on loans made for waste pollution abatement and control facilities under §1943.66(b) of this subpart.

(5) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(6) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar proposes and periods of time.

(7) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(8) Be the owner or operator of not larger than a family farm after the loan is closed, when loan funds are used for soil and water conservation and protection purposes as defined in §1943.66 (a)(1) through (a)(5) of this subpart. There is no farm size restriction on loans made for waste pollution abatement and control facilities under §1943.66(b) of this subpart.

(9) If a tenant, has a satisfactory written lease for a sufficient period of time, and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any remaining value of the improvements upon termination of the lease.

(10) Consist of members, stockholders, partners, or joint operators, who are *individuals* and *not* corporation(s), partnership(s), cooperative(s) or joint operation(s).

(11) When loan funds will be used for soil and water conservation and protection purposes (§1943.66 (a)(1) through (a)(5) of this subpart), and the members, stockholders, partners, or joint operators holding a majority interest are related by blood or marriage, the requirements of §1943.12(b)(5), (b)(7) (if limited resource applicant), and (b)(8) of subpart A of part 1943 of this chapter will apply.

(12) When loan funds will be used for soil and water conservation and protection purposes, and the members, stockholders, partners, or joint operators holding a majority interest are not related by blood or marriage, the requirements of §1943.12(b)(6) of subpart A of part 1943 of this chapter will apply.

(c) *Borrower training.* The applicant must agree to meet the training requirements of §1924.74 of subpart B of part 1924 of this chapter unless a waiver is granted in accordance with that section. In the case of a cooperative, corporation, partnership, or joint operation, any individual member, stockholder, partner, or joint operator holding a majority interest in the operation or who is operating the farm

must agree to complete the training or qualify for the waiver on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities. If the applicant has previously been required to obtain training, the applicant must be enrolled in and attending, or have satisfactorily completed, the training required.

[53 FR 35706, Sept. 15, 1988, as amended at 56 FR 3972, Feb. 1, 1991; 58 FR 15072, Mar. 19, 1993; 58 FR 69199, Dec. 30, 1993]

§§ 1943.63–1943.65 [Reserved]

§ 1943.66 Loan purposes.

Loans that are consistent with all Federal, State, and local environmental quality standards may be made to:

(a) Pay costs for construction, materials, supplies, equipment, and services related to, soil and water conservation and protection purposes, such as:

(1) Installation of conservation structures, including terraces, sod waterways, permanently vegetated stream borders and filter strips, windbreaks (tree or grass), shelterbelts, and living snow fences.

(2) Establishment of forest cover for sustained yield timber management, erosion control, or shelter belt purposes.

(3) Establishment or improvement of permanent pasture.

(4) The conversion to and maintenance of sustainable agriculture production systems, as described by Department technical guides and handbooks.

(5) Payment of costs to build conservation structures or establish con-

servation practices on highly erodible land to comply with a conservation plan in accordance with part 12 of this title (see attachment 1 of exhibit M of subpart G of part 1940 of this chapter which is available in any FmHA or its successor agency under Public Law 103–354 office).

(6) Other purposes consistent which plans for soil and water conservation, integrated farm management, water quality protection and enhancement, and wildlife habitat improvement.

(7) The following items/purposes related to conservation and protection purposes and water quality are authorized:

(i) Sodding, subsoiling, land leveling, liming, and fencing.

(ii) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(iii) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(iv) Reasonable expenses incidental to obtaining, planning, closing, and making the loan, such as fees for legal, engineering or other technical services and first year insurance premiums which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(v) Purchase or repair of special-purpose equipment, such as terracing, land leveling, and ditching equipment, provided:

(A) Such equipment is needed and will facilitate the completion or maintenance of the planned improvement, and

(B) The cost of the equipment plus the other costs related to improvement will not be more than if performed by a contractor or by another method.

(vi) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(A) The purchase of water stock or membership in an incorporated water users association.

(B) The acquisition of a water right through appropriation, agreement, permit, or decree.

§ 1943.67

(C) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(1) The value of the land without the water supply or right is only an incidental part of the title price, and

(2) The water supply will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(vii) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(viii) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service (ASCS) or the Soil Conservation Service (SCS) only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed \$1,000, the applicant will assign the payment to the FmHA or its successor agency under Public Law 103-354.

(ix) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(x) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(A) Such a loan may be made on land with defective title owned by the applicant or on land in which the applicant owns an undivided interest providing:

(1) The amount of funds used on such land is limited to \$25,000,

(2) There is adequate security for the loan, and

(3) The tract is not included in the appraisal report.

(B) Such a loan may be made on land leased by the applicant providing:

(1) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life,

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(2) A written lease provides for payment to the tenant or assignee for any remaining value of the improvement if the lease is terminated, and

(3) There is adequate security for the loan.

(b) Pay the costs of meeting Federal, State, or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures, if necessary, to comply with such pollution abatement requirements.

[58 FR 15073, Mar. 19, 1993]

§ 1943.67 Loan limitations.

An SW loan will not be approved if:

(a) The loan being made exceeds the lesser of the value of the farm or other security for the loan, or \$50,000.

(b) The total outstanding insured SW, Farm Ownership (FO) or Recreation (RL) loan principal balance including the new loan owned by the applicant will exceed the lesser of \$200,000, or the market value of the farm or other security.

(c) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public records between tracts.

(d) The limitation found in §1943.79 (c) of this subpart is exceeded.

(e) The loan is made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in exhibit M of subpart G of part 1940 of this chapter. Refer to FmHA Instruction 2000-LL (available in any FmHA or its successor agency under Public Law 103-354 Office) for assistance in implementation.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 15074, Mar. 19, 1993]

§1943.68 Rates and terms.

(a) *Terms of loan.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be

adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA or its successor agency under Public Law 103-354 when setting the terms. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of least partial interest, for the first five years.

(b) *Reamortization*. When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under subpart S of part 1951 of this chapter.

(c) *Interest rate*. Upon request of the applicant, the interest rate charged by FmFA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the type of assistance involved. A lower rate may be established in this exhibit for a limited resource applicant when loan funds are being used for soil and water conservation and protection purposes denoted in §1943.66 (a)(1) through (a)(5) of this subpart, subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in §1943.54 of this subpart.

(2) The Farm and Home Plan and Business Analysis—Nonagricultural Enterprise form, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 15074, Mar. 19, 1993]

§1943.69 Security.

Each SW loan will be secured by real estate, chattels, leaseholds, or a combination of these. Chattels and/or leaseholds, however, will only be taken as security as set forth in paragraphs (c) and (d) of this section. The total amount of security required will be the lesser of either 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount. Security in excess of 150 percent of the loan amount will only be taken when it is not practical to separate the property, i.e., a tract of land. The specific items of security, along with the value of the security, will be documented in the case file. This information will be obtained from values established in accordance with §1943.75 of this subpart. If the applicant disagrees with the values established, FmHA or its successor agency under Public Law 103-354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103-354 requirements. In cases, when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail. In unusual cases, the loan approval official may require a cosigner in accordance with §1910.3 (d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Real estate security*. (1) A mortgage will be taken on all real estate refinanced or improved with SW funds, and by any additional real estate security needed to meet the requirements of this section.

(2) Security will also include items which are considered part of the farm and ordinarily pass with the title to the farm such as, but not limited to, assignments of leases or leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, and royalties from mineral rights.

(3) A first lien is required on real estate, when available. In addition, loans

will be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA or its successor agency under Public Law 103-354 whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in subpart B of part 1927 of this chapter, except as modified by the "Memorandum of Understanding-FCA-FmHA or its successor agency under Public Law 103-354," FmHA Instruction 2000-R (available in any FmHA or its successor agency under Public Law 103-354 office).

(4) Advice on obtaining security will be received from OGC when necessary.

(5) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(6) Any loan of \$10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in subpart B of part 1927 of this chapter, provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA or its successor agency under Public Law 103-354 loan being made simultaneously with the SW loan.

(7) The Departments of Agriculture and Interior have agreed that FmHA or its successor agency under Public Law 103-354 loans may be made to Native Americans and secured by real estate when title is held in trust or restricted

status. When security is so taken on real estate held in trust or restrictive status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor; and

(ii) The BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(b) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922-E (available in any FmHA or its successor agency under Public Law 103-354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(2) A lien will not be taken on property that cannot be made subject to a valid lien.

(3) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract being financed, refinanced, improved, or otherwise used for collateral provides primary security for the loan(s).

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; personal vehicles necessary for family living and farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) A lien will not be taken on marginal land, including timber, when a softwood timber (ST) loan is secured by such land.

(c) *Chattel security.* Ordinarily, SW loans will not be secured by chattels.

However, loans will be secured by chattels as follows:

(1) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and the best lien obtainable on all real estate will be taken and does not provide primary security for the loan.

(2) Chattel security will be obtained when real estate will not provide primary security for the loan and the best lien obtainable has been taken on all real estate.

(3) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan.

(4) If there is no real estate security available and a lien is taken on chattels only, the loan cannot be over \$100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(5) Chattel security will be obtained and kept effective as notice to third parties as provided in subpart B of part 1941 and subpart A of part 1962 of this chapter.

(d) *Loans secured by leaseholds.* A loan will be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(1) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(2) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize the Government's security. Any provisions which may jeopardize the Government's security must be limited, modified,

waived or subordinated in favor of the Government.

(3) With respect to achieving the purpose of the loan, obtaining adequate security and being able to service the loan and enforce its rights, the Government, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the SW mortgage on the leasehold interest, FmHA or its successor agency under Public Law 103-354 should consider whether or not:

(i) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(ii) The right to foreclose the SW mortgage and sell without restrictions would adversely affect the salability or market value of the security.

(iii) FmHA or its successor agency under Public Law 103-354 has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(iv) FmHA or its successor agency under Public Law 103-354 has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit. In case of a credit sale, the FmHA or its successor agency under Public Law 103-354 should take a vendor's mortgage with rights similar to those under the original SW mortgage.

(v) The borrower has the right, in the event of default or inability to continue with the lease and the SW loan, to transfer the leasehold, subject to the SW mortgage, to an eligible transferee who will assume the SW debt.

(vi) Advance notice will be given to FmHA or its successor agency under Public Law 103-354 of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit FmHA or its successor agency under Public Law 103-354 to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, to

refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA or its successor agency under Public Law 103–354’s obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA or its successor agency under Public Law 103–354’s occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

“All Borrower’s right, title, and interest in and to the leasehold estate for a term of ____ years beginning on ____, 19__, created and established by a certain Lease dated ____, 19__, executed by ____ as lessor(s), recorded on ____, 19__, in Book ____, page ____ of the ____ Records of said County and State, and any renewals and extensions thereof, and all Borrower’s right, title, and interest in and to said Lease, covering the following real estate:” (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government’s written consent, any of the Borrower’s right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made

to Indians holding title to land in trust or restricted status, FmHA or its successor agency under Public Law 103–354 and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Special security requirements.* When SW loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an SW loan(s) as individual(s) or when SW loans are made to eligible individuals, who are members, stockholders, partners or joint operators of an entity which is presently indebted for an SW loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA or its successor agency under Public Law 103–354 for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(g) *Same security.* Except as provided in paragraph (f) of this section, when an SW loan (insured or guaranteed) is made to a borrower who has other FmHA or its successor agency under Public Law 103–354 loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

[53 FR 35706, Sept. 15, 1988, as amended at 57 FR 18678, 18679, Apr. 30, 1992; 59 FR 22962, May 4, 1994; 59 FR 25801, May 18, 1994]

§§ 1943.70–1943.72 [Reserved]

§ 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of part 1806 of this chapter (FmHA instruction 426.2) as well as subpart G of part 1940 of this chapter will be complied with when loan funds are used to

construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

- (i) Likelihood of flooding.
- (ii) Probability of flood damage.
- (iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA or its successor agency under Public Law 103-354 representatives will evaluate the proposal and record the decision in the loan docket in accordance with subpart G of part 1940 of this chapter.

(b) *Civil rights.* The provisions of subpart E of part 1901 of this chapter will be complied with on all loans made which involve any development financed by FmHA or its successor agency under Public Law 103-354 that will be performed by a contract or sub-contract of more than \$10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of subpart F of part 1901 of this chapter apply.

(d) *Environmental requirements.* See subpart G of part 1940 of this chapter for applicable environmental requirements. Refer to FmHA Instruction 2000-LL (available in any FmHA or its successor agency under Public Law 103-354 office) for assistance in implementation.

(e) *Equal Credit Opportunity Act.* In accordance with title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA or its successor agency under Public Law 103-354 will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(f) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use and restrictions for water development. State supplements will be issued to provide guidelines which:

- (i) State all requirements to be met, including the acquisition of water rights.
- (ii) Define areas where development of ground water for irrigation is not recommended.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

[53 FR 35706, Sept. 15, 1988, as amended at 57 FR 18679, Apr. 30, 1992; 58 FR 15074, Mar. 19, 1993]

§1943.74 Special requirements.

(a) *Land development.* When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) program.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

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(1) The land to be irrigated is suitable for irrigation.

(2) The applicant has a right to use water for irrigation.

(3) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(4) If irrigation specialists have prepared any feasibility studies, copies of these studies have been submitted to FmHA or its successor agency under Public Law 103–354.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in subpart A of part 1806 of this chapter (FmHA Instruction 426.1) on real estate taken as primary security, as defined in §1943.54 of this subpart. Property insurance will not be required when real estate is taken as additional security, as defined in §1943.54 of this subpart.

(2) See §1943.73(a) of this subpart for information about flood and mudslide hazard areas.

(3) Chattel security should be insured against hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(f) *Liens junior to the FmHA or its successor agency under Public Law 103–354 lien.* A loan will not be approved if a lien junior to the FmHA or its successor agency under Public Law 103–354 lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the SW loan, unless the total debt against the security would be within its market value.

(g) *Graduation of SW borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 26681, May 5, 1993]

§ 1943.75 Options, planning, and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real property. Form FmHA or its successor agency under Public Law 103–354 440–34, “Option to Purchase Real Property,” may be used. Other forms may be used if acceptable to all parties concerned and to FmHA or its successor agency under Public Law 103–354. When an FmHA or its successor agency under Public Law 103–354 form is not used, a provision should be included which makes the option contingent upon FmHA or its successor agency under Public Law 103–354 making a loan to the buyer.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in subpart B of part 1924 of this chapter.

(c) *Appraisals.* (1) Except as provided in paragraph (c)(2) of this section, real estate appraisals will be completed on forms in accordance with §761.7 of this title, and in the case of an appraisal of residential real estate, the appropriate Agency form (available in each Agency

State Office) or other format that contains the same information, by a designated FmHA or its successor agency under Public Law 103-354 real property appraiser, or FmHA or its successor agency under Public Law 103-354 State-certified general contract real property appraiser. Appraisals are necessary when real estate is taken as primary security, as defined in §1943.4 of this subpart, and when loans are serviced in accordance with subpart S of part 1951 of this chapter. Real estate appraisals are not required when real estate is taken as additional security, as defined in §1943.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(2) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (c)(4) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA or its successor agency under Public Law 103-354 designated review appraiser.

(3) Real estate appraisals will be completed as provided in §761.7 of this title. The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security for Farmer Programs loans and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA or its successor agency under Public Law 103-354 1922-11, "Appraisal for Mineral Rights" or other format that contains the same information.

(4) The value of stock required to be purchased by Federal land Bank (FLB) borrowers may be added to the recommended market value of the security, provided:

- (i) An assignment is obtained on the stock, or
- (ii) An assignment is obtained which provided that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA or its successor agency under Public Law 103-354, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(5) In the case of nonreal estate security, the following items apply:

(i) Form FmHA or its successor agency under Public Law 103-354 440-21, "Appraisal of Chattel Property," will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) The current market value or, if appropriate, the current cash value will be determined.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 48289, Sept. 15, 1993; 59 FR 16773, Apr. 8, 1994; 64 FR 62568, Nov. 17, 1999]

§ 1943.76 Planning and performing development.

The development work will be planned and completed in accordance with part 1924, subpart A of this chapter.

§ 1943.77 Relationship with other lenders.

(a) An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an SW loan, consideration will be given to a participation loan. FmHA or its successor agency under Public Law 103-354 employees may not guarantee, personally or for FmHA or its successor agency under Public Law 103-354, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship

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in processing loans to a mutual applicant or borrower. When an SW loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA or its successor agency under Public Law 103–354 lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§§ 1943.78–1943.82 [Reserved]

§ 1943.83 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by subpart A of part 1901 of this chapter, provided:

(1) Section 1943.67 of this subpart, containing loan limitations, is not violated.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in §1910.4 of subpart A of part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The Agency has certified the applicant eligible;

(ii) Funds are requested for authorized purposes;

(iii) The proposed loan is based upon a feasible plan. Planning forms other than Form FmHA or its successor agency under Public Law 103–354 432–2, “Farm and Home Plan” may be used when they provide the necessary information.

(iv) The security is adequate;

(v) Necessary supervision is planned; and

(vi) All other pertinent requirements have been met or will be met.

(2) [Reserved]

[53 FR 35706, Sept. 15, 1988, as amended at 55 FR 21530, May 25, 1990; 57 FR 18679, Apr. 30, 1992; 61 FR 35926, July 9, 1996]

§ 1943.84 Requesting title service.

When the loan is approved and real estate will serve as security, the County Supervisor will request the applicant to obtain title clearance as provided in subpart B of part 1927 of this chapter, when required if this has not been done. If an option is involved, the applicant will sign and send to the seller Form FmHA or its successor agency under Public Law 103–354 440–35, “Acceptance of Option,” or other suitable forms.

[53 FR 35706, Sept. 15, 1988, as amended at 56 FR 67481, Dec. 31, 1991]

§ 1943.85 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the field office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the field office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after loan closing or if the amount of funds that cannot be disbursed does not exceed \$5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the field office terminal system. The amount of each advance should meet

the needs of the borrower as much as is possible, so the amount in the supervised bank account will be kept to a minimum. The Finance Office will continue to supply Form FmHA or its successor agency under Public Law 103-354 440-57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with subpart A of part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 2018-D, (available in any FmHA or its successor agency under Public Law 103-354 office). The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 2018-D, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled, the County Supervisor will take the following actions:

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA or its successor agency under Public Law 103-354 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA or its successor agency under Public Law 103-354 1940-10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to

indicate the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 2018-D (available in any FmHA or its successor agency under Public Law 103-354 office).

(2) Interested parties will be notified of the cancellation as provided in subpart B of part 1927 of this chapter.

(d) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA or its successor agency under Public Law 103-354 194-10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA or its successor agency under Public Law 103-354 440-57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

[53 FR 35706, Sept. 15, 1988, as amended at 54 FR 39727, Sept. 28, 1989; 56 FR 67481, Dec. 31, 1991; 59 FR 54788, Nov. 2, 1994]

§§ 1943.86-1943.87 [Reserved]

§ 1943.88 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower of the loan closing date. The following appropriate actions will be taken in connection with, and after loan closing:

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of

subpart B of part 1927 of this chapter except as modified for loans of \$10,000 or less in paragraph 1943.69(a)(6).

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in subpart B of part 1941 of this chapter for Operating loans. The following forms will be used for chattel security:

(1) Form FmHA or its successor agency under Public Law 103-354 440-15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA or its successor agency under Public Law 103-354 440-25, "Financing Statement," or, when authorized, Form FmHA or its successor agency under Public Law 103-354 440-A25, "Financing Statement."

(3) State forms may be used if National forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small defi-

ciencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out; and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter.

(1) For assignment of income, Form FmHA or its successor agency under Public Law 103-354 443-16, "Assignment of Income from Real Estate Security," will be used, except, if it is legally inadequate in a State, it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA or its successor agency under Public Law 103-354 443-16 is executed, appropriate notations will be made on Form FmHA or its successor agency under Public Law 103-354 1905-1, "Management System Card—Individual," to insure the proceeds, or the specified portion of the proceeds assigned to FmHA or its successor agency under Public Law 103-354

from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA or its successor agency under Public Law 103-354 1940-17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA or its successor agency under Public Law 103-354 Loan made simultaneously with the SW loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA or its successor agency under Public Law 103-354 notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) *Individuals.* Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see §1910.3(e) of subpart A of part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA or its successor agency under Public Law 103-354 is to incur individual personal liability regardless of any State law to the contrary.

(ii) *Cooperatives or corporations.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

(iii) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in a partnership or joint operators in the joint operation, as individuals.

(h) *Supplementary payment agreement.* Form FmHA or its successor agency under Public Law 103-354 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in §1943.74(d) of this subpart.

(j) *Effective time of loan closing.* An SW loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to the County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:

(i) Give the original to the borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies:

(i) File the Mortgagee title policy in the County Office file, and

(ii) Give the owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title:

(i) Return to the borrower, except when they were obtained from a third party with the understanding they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA or its successor agency under Public Law 103-354 140-4, "Transmittal of Documents," will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

[53 FR 35706, Sept. 15, 1988, as amended at 56 FR 67481, Dec. 31, 1991; 57 FR 18679, Apr. 30, 1992; 58 FR 48289, Sept. 15, 1993; 59 FR 25801, May 18, 1994]

§§ 1943.89–1943.91

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§§ 1943.89–1943.91 [Reserved]

§ 1943.92 Servicing.

SW loans will be serviced in accordance with subpart A of part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with subpart A of part 1962 of this chapter. Bureau of Reclamation (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See exhibit A of this subpart, “Memorandum of Understanding Between the Bureau of Reclamation, Department of the Interior, and the Farmers Home Administration or its successor agency under Public Law 103–354, Department of Agriculture,” for additional information on these loans.

§ 1943.93 Subsequent SW loans.

A subsequent SW loan is a loan made to a borrower who is currently in debt for an SW loan.

(a) Subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage; or

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause; or

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with subpart A of part 1965 of this chapter.

§§ 1943.95–1943.99 [Reserved]

§ 1943.100 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBIT A TO SUBPART B OF PART 1943— MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMA- TION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINIS- TRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354, DEPART- MENT OF AGRICULTURE

Whereas, under section 8 of the 1977 Drought Emergency Act (P.L. 95–18), hereafter referred to as “the Act,” the Bureau of Reclamation (BR) is authorized to make loans to irrigators for the purpose of undertaking construction, management, conservation activities, or the acquisition and transportation of water, which can be expected to have an effect in mitigating losses and damages resulting from the 1976–1977 drought period;

Whereas, the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 has an existing soil and water program (SW) authorized by section 304 of the Consolidated Farm and Rural Development Act for loans to individuals that accomplish purposes similar to those in the Act;

Whereas, it is more efficient and in the best interests of the United States, and in accordance with section 6 of the Act, for BR to procure the services of FmHA or its successor agency under Public Law 103–354 pursuant to the terms of the Economy Act of 1932 (31 U.S.C. 686) to make and service loans to individual irrigators as authorized by the Act.

Now therefore the parties agree:

1. For purposes of this Memorandum the term *irrigators* shall mean any person or legal entity who holds a valid existing water right for irrigation purposes within the Federal reclamation projects. Federal reclamation projects means any project constructed or funded under Federal reclamation law and specifically including projects having approved loans under the Small Reclamation Projects Act of 1956, as amended.

2. FmHA or its successor agency under Public Law 103–354 shall make and service loans to individual irrigators as authorized by the Act pursuant to its SW program and applicable FmHA or its successor agency under Public Law 103–354 regulations except as modified hereby.

3. The loans shall be only for the purposes relating specifically to irrigation and set forth in FmHA Instruction 443.2, IVA1, A8, B1, B2, and C. The loans shall be interest free. Loans for water acquisition and transportation shall be repaid over a period not to exceed 5 years. Other loans shall be repaid over a period not to exceed 5 years except such loans which generate benefits which are usable beyond 1977 shall be repaid within a

period which shall be the shorter of the estimated useful life of the facilities or the reasonable payment capacity of the irrigator but in no event to exceed 40 years. All loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by November 30, 1977.

4. Services rendered by FmHA or its successor agency under Public Law 103-354 pursuant to this Memorandum of Understanding shall be on a nonreimbursable basis to the irrigator. For services rendered, BR shall pay to FmHA or its successor agency under Public Law 103-354 a charge of 5 percent of principal of each loan. BR directs that FmHA or its successor agency under Public Law 103-354 disburse such service charge to itself directly upon the closing of each loan.

5. Three million dollars shall be transferred to FmHA or its successor agency under Public Law 103-354 by Standard Form 1151, which amount shall be available for construction, management, and conservation activities. An additional sum of \$5 million may be made available upon request of FmHA or its successor agency under Public Law 103-354 for the acquisition and transportation of water.

6. *Monthly Report:* FmHA or its successor agency under Public Law 103-354 shall submit a Standard Form 133, "Report on Budget Execution", in accordance with OMB Circular A-34, to the Bureau of Reclamation, Washington, D.C. 20240, attention code 370.

7. *Accomplishment:* FmHA or its successor agency under Public Law 103-354 shall submit to the Bureau of Reclamation, Washington, D.C. 20240, attention code 400, a complete report on expenditures and accomplishments under this Memorandum on January 16, 1978.

Date of June 29, 1977.

Bureau of Reclamation, Department of the Interior,

R. KEITH HIGGINSON,
Commissioner.

Dated: July 15, 1977.

Farmers Home Administration or its successor agency under Public Law 103-354, Department of Agriculture,

MARTY HOLLERAN,
for Gordon Cavanaugh,
Administrator.

ATTACHMENT

AMENDATORY-MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354, DEPARTMENT OF AGRICULTURE

WHEREAS, the Bureau of Reclamation (BR) and the Farmers Home Administration (FmHA) or its successor agency under Public

Law 103-354 consummated a Memorandum of Understanding on July 15, 1977, whereby BR would procure the services of FmHA or its successor agency under Public Law 103-354 pursuant to the terms of the Economy Act of 1932 (31 U.S.C. 686) to make and service loans to individual irrigators as authorized by section 8 of the 1977 Drought Emergency Act (Pub. L. 95-18); and

WHEREAS, item 3 of that Memorandum of Understanding provides in part that all loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by November 30, 1977; and

WHEREAS, Pub. L. 95-107, enacted on August 17, 1977, amends Pub. L. 95-18 to accomplish, among other things, an extension of the time for completing construction activities under the authorities of Pub. L. 95-18 from November 30, 1977, to January 31, 1978.

NOW THEREFORE the parties agree that the date November 30, 1977, in the last sentence of item 3 of the Memorandum of Understanding executed by BR on June 29, 1977, and FmHA or its successor agency under Public Law 103-354 on July 15, 1977, be revised to January 31, 1978, so that the sentence will read, "All loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by January 31, 1978."

Date of September 6, 1977.

Bureau of Reclamation, Department of the Interior,

R. KEITH HIGGINSON,
Commissioner.

Farmers Home Administration or its successor agency under Public Law 103-354, Department of Agriculture,

GORDON CAVANAUGH,
Administrator.

SEPTEMBER 7, 1977.

Subpart C—Small Farmer Outreach Training and Technical Assistance Program

SOURCE: 59 FR 66443, Dec. 27, 1994, unless otherwise noted.

§ 1943.101 General.

This subpart provides procedures for administration of the Small Farmer Outreach Training and Technical Assistance Program whereby an 1890 or other eligible educational institution or community-based organization as referenced in § 1943.105 of this subpart, also referred to as the recipient, enters into a grant, cooperative, or other agreement with the Farm Service

§ 1943.102

Agency (FSA) to provide outreach, training, and technical assistance to members of socially disadvantaged groups to own and operate farms and ranches and to participate in agricultural programs.

§ 1943.102 Objectives.

To meet the objectives of the program referenced in paragraphs (a) and (b) of this section, FSA will fund grant agreements, cooperative agreements, or enter into Memorandums of Understanding (MOU) with recipients as referenced in § 1943.105 of this subpart, for Small Farmer Outreach Training and Technical Assistance Projects which are determined to meet the objectives of the program:

(a) The long-term objective of the Small Farmer Outreach Training and Technical Assistance Program is to keep small farmers, especially those who are members of socially disadvantaged groups, on the farm and strengthen the rural economy.

(b) An immediate objective of the Small Farmer Outreach Training and Technical Assistance Program is to encourage and assist members of socially disadvantaged groups to own and operate farms and ranches and to participate in agricultural programs.

§ 1943.103 Project period.

A cooperative agreement or other agreement will specify a project for a period generally of 5 years, with an option for renewal up to the 5-year period, subject to the availability of funds or termination of the project by mutual agreement or for cause.

§ 1943.104 Definitions.

For the purpose of the Small Farmer Outreach Training and Technical Assistance Program, the following definitions are applicable:

Agricultural programs. Eligible programs shall include, but are not limited to, one or more of the following programs: Agricultural conservation program, programs comprising the environmental conservation acreage reserve program (ECARP), conservation technical assistance program, emergency conservation program, forestry incentives program, Great Plains Conservation Program, integrated farm

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management option program, price support and production adjustment programs, rural environmental conservation program, soil survey program, and water bank program; also the farm loan programs (farm ownership, operating, soil and water, and emergency loans) of the FSA.

Awarding official. The Administrator of the FSA or designee.

Community-based organization. Those nonprofit, nongovernment organizations with a well defined constituency that includes all or part of a particular community, e.g., communities consisting of socially disadvantaged farmers and ranchers. Socially disadvantaged farmers and ranchers must play a role in the development and implementation of any program or project undertaken by the organization.

Cooperative agreement. The same meaning as *grant*, except that, at the time a cooperative agreement is awarded, substantial involvement is anticipated between FSA, acting for the Federal Government, and the recipient during performance under the agreement. (Refer to exhibit A of FmHA Instruction 1943-C (available in any State office).)

Grant. For purposes of this regulation, an award by FSA, acting for the Federal Government, of money to the recipient with the following characteristics:

(1) The principal purpose of the award is to accomplish a public purpose authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time an award is made, no substantial involvement is anticipated between FSA, acting for the Federal Government, and the recipient.

Memorandum of Understanding (MOU). For purposes of this regulation, a documented plan between FSA and the recipient or recipients for carrying out their separate activities in a project of mutual interest. When an understanding is reached as to the area of operations and duties to be performed by the parties concerned, each party directs its own activities and utilizes its own resources. An MOU is not a fund obligation document since it does

not directly involve a financial assistance transaction.

Project. The total activities within the scope of the program as identified in the MOU, grant, cooperative or other agreement.

Project Director. The individual who is responsible for the project, as designated by the recipient in the project proposal and approved by the awarding official. The project director will devote full time to the administration of the project.

Project period. The total time approved by the awarding official for conducting the proposed project as outlined in an approved project proposal or the approved portions thereof and as specified in the cooperative or other agreement.

Recipient. For purposes of this subpart, an entity as defined in § 1943.105 of this subpart that has entered into an MOU, grant, or cooperative or other agreement with FSA.

Socially disadvantaged farmer or rancher. A farmer or rancher who is a member of a socially disadvantaged group. (For entity applicants, the majority interest has to be held by socially disadvantaged individuals.)

Socially disadvantaged group. A group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups consist of Women, African-Americans, Native Americans, Alaskan Natives, Hispanics, Asians, and Pacific Islanders.

§ 1943.105 Eligible entities.

(a) FSA will consider proposals only from:

- (1) 1890 Land-Grant Colleges, including Tuskegee University.
- (2) Indian tribal community colleges.
- (3) Alaska native cooperative colleges.
- (4) Hispanic-serving post-secondary educational institutions.
- (5) Other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers or ranchers in their region.

(6) Any community-based organization that:

(i) Has demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers and ranchers;

(ii) Provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the 2 years preceding its application for assistance; and

(iii) Does not engage in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) In addition to those entities referenced in paragraph (a) of this section, an applicant must:

(1) Have adequate financial resources for performance and the necessary experience, organizational and technical qualifications, and facilities or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through subagreement(s));

(2) Have the ability to comply with the proposed or required completion schedule for the project;

(3) Have an adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(4) Have a satisfactory record of performance, including, in particular, any prior performance under grants, contracts, or cooperative agreements from the Federal Government; and

(5) Otherwise be qualified and eligible to receive funding for a grant agreement, cooperative agreement, or other agreement under the applicable laws and regulations.

§§ 1943.106–1943.110 [Reserved]

§ 1943.111 Process for consideration.

(a) A program solicitation will be published in the FEDERAL REGISTER and such other publication(s) as deemed appropriate, as early as practicable every 5 years that funds will be available for new project use and at other appropriate times.

(b) The project proposal must contain the following information:

(1) *Background and need for the project.* Explain the circumstances

which necessitate a Small Farmer Outreach Training and Technical Assistance Project within the State to serve small farmers, especially members of socially disadvantaged groups.

(2) *Objectives and goals proposed to meet the objectives.* Clearly state the objectives of the project, which should be in line with the objectives of the program stated in § 1943.102 of this subpart, and explain the goals proposed to meet the objectives.

(3) *Statement of Work, including staffing.* Describe the plan of action for meeting the objective of the Small Farmer Outreach Training and Technical Assistance Program and the necessary staffing.

(4) *Proposed budget.* (i) Submit a proposed budget for each of the 5 years, showing line-by-line cost items for the proposed project. Include any in-kind contributions to be provided.

(ii) Show all funding sources and itemize costs by the following line items: personnel costs, equipment, material and supplies, travel, and all other costs.

(iii) Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

(iv) Funds may be requested under any of the line items listed above provided that the item or source for which support is requested is identified as necessary for successful conduct of the project, is allowable under the authorizing legislation and applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(5) *Identification of personnel.* Incorporate into the proposal the resumes of all anticipated personnel, including the Project Director. Also discuss the experience, qualifications, and availability of all personnel, including the Project Director, to direct and carry out the project.

(c) The State Office will review the proposal and forward the proposal to the National Office Project Manager, within 15 days of receipt, with the State Office's recommendations.

(d) The National Office will make a preliminary review of the proposal and reserves the right to return it to the State Office with any questions or comments to be clarified by the 1890 or

other eligible educational institution or community-based organization. A time period for resubmission will be specified.

(e) All proposals from entities eligible for funding under § 1943.105 of this subpart shall be evaluated for funding consideration. To assist in the evaluation and obtain the best possible balance of viewpoints for funding consideration, a proposal review panel will be used. The proposal review panel will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals. The proposal review panel will use Form FmHA or its successor agency under Public Law 103-354 1943-2, "EVALUATION—Small Farmer Outreach Training and Technical Assistance Program," to evaluate each proposal. The proposal review panel will evaluate each proposal against the five criteria using the following scale: Highly Responsive (5); Fully Responsive (3); Marginally Responsive (1); and Not Responsive (0). The criteria used by the proposal review panel and the criteria weights are:

(1) *Feasibility and Policy Consistency (3.5).* Degree to which the proposal clearly describes its objective and evidences a high level of feasibility and consistency with United States Department of Agriculture (USDA) policy and FSA mission.

(2) *Institutional Commitment (3.5).* Degree to which the institution or organization is committed to the project, as shown by funds, in-kind services, or historical success in meeting the objectives of the program.

(3) *Number of Counties and Farmers Served (3.5).* Degree to which the proposal reflects collaborative approaches in meeting with other agencies or organizations to enhance the objectives of the program. Also, the areas and number of farmers who would benefit from the services offered.

(4) *Socially Disadvantaged Applicants—Outreach (3.5).* Degree to which the proposal contains efforts to reach persons identified as socially disadvantaged farmers and ranchers in designated counties.

(5) *Preparatory Features—Statement of Work (6.0)*. Degree to which the proposal reflects special innovative features to attract, interest, and improve the economical and social conditions of socially disadvantaged farmers and ranchers.

(f) The final decision to award is at the discretion of the awarding official. The awarding official shall consider the ranking, comments, and recommendations from the proposal review panel and any pertinent information before deciding which applications to approve and the order of approval. The awarding official will notify in writing entities whose proposals are rejected. In accordance with §1900.55 of subpart B of part 1900 of this chapter, appeal rights will be provided only to those entities identified as eligible under §1943.105 of this subpart.

(g) After a decision regarding funding is made, FSA and the recipient which is selected will enter into a grant or cooperative agreement. The awarding official will notify the recipient of approval and inform them of the necessary documents needed to execute the agreement. If no funding is involved, FSA and the recipient will enter into an MOU.

§§ 1943.112–1943.114 [Reserved]

§ 1943.115 Authorized use of funds.

Any funds authorized under this subpart will be used solely for the operation and administration of the Small Farmer Outreach Training and Technical Assistance Program specifically for the project under the cooperative or other agreement. There is no other authorized use of the funds. Eligible costs are limited to those line items specified in §1943.111 (b)(4) of this subpart.

§§ 1943.116–1943.125 [Reserved]

§ 1943.126 Other applicable Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to proposals considered for review or cooperative and other agreements awarded under the program. These include, but are not limited to the following:

(a) 7 CFR part 1b—USDA Implementation of the National Environmental Policy Act;

(b) 7 CFR part 3—USDA implementation of OMB Circular A-129 regarding debt collection;

(c) 7 CFR part 1.1—USDA implementation of the Freedom of Information Act;

(d) 7 CFR part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

(e) 7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB Directives (i.e., Circular Nos. A-110, A-21, and A-122) and incorporating provisions of 31 U.S.C. 6301-6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Public Law No. 95-224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

(f) 7 CFR part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(g) 7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(h) 7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

(i) 29 U.S.C. 794, Section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

(j) 35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained 37 CFR part 401).

§ 1943.127 Fund disbursement.

The method of payment will be by reimbursement by Treasury check, and payment will be requested on Standard Form (SF) 1034, "Public Voucher for Purchases and Services Other Than

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Personal,” or SF-270, “Request for Advance or Reimbursement,” whichever is applicable. Payments will be processed in accordance with 7 CFR parts 3015 and 3016.

§ 1943.128 Financial management systems and reporting requirements.

(a) Recipients must comply with standards for the financial management and reporting and program performance reporting found in 7 CFR parts 3015 and 3016.

(b) Recipients must provide to the State Office quarterly financial and program performance reports. The reports are due 30 days after the reporting period, and an original and two copies of each report will be submitted. The financial report will be presented on SF-269A, “Financial Status Report,” and the financial and program performance reports will be prepared in accordance with 7 CFR parts 3015 and 3016.

(c) The program performance report should also address progress on the activities under each of the areas of Outreach, Training, and Technical Assistance, as stipulated in the cooperative agreement or other agreement.

(d) Within 30 days after receipt, the State Office will forward the reports to the National Office Project Manager, with the State Office’s comments and recommendations.

§§ 1943.129–1943.135 [Reserved]

§ 1943.136 Standards of conduct for employees of recipient.

(a) Recipients must establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others such as those with whom they have family, business, or other ties. Therefore, recipients receiving financial support must have written policy guidelines on conflict of interest and the avoidance thereof. These guidelines should reflect State and local laws and must cover financial interests, gifts, gratuities and favors, nepotism, and other areas such as political participation and bribery. These rules must also

indicate the conditions under which outside activities, relationships, or financial interests are proper or improper, and provide for notification of these kinds of activities, relationships, or financial interests to a responsible and objective recipient official. For the requirements of a code of conduct applicable to procurements under grants and cooperative agreements, see the procurement standards prescribed by 7 CFR 3015.181.

(b) The rules of conduct must contain a provision for prompt notification of violations to a responsible and objective recipient official and must specify the type of administrative action that may be taken against an individual for violations.

(c) A copy of the rules of conduct must be given to each officer, employee, board member, and consultant of the recipient who is working on the FSA financed project, and the rules must be enforced to the extent permissible under State and local law or to the extent to which the recipient determines it has legal and practical enforcement capacity. The rules need not be formally submitted and approved by the awarding official; however, they must be made available for review upon request, for example, during a site visit.

§ 1943.137 Monitoring compliance and penalty for noncompliance.

(a) *FSA monitoring.* FSA will monitor compliance of the Small Farmer Outreach Training and Technical Assistance projects through the reports received in accordance with § 1943.128 of this subpart, through information received from field offices and the public, and may include on-site visits to observe the operation and administration of the program.

(b) *Audits.* Recipients are subject to the audit requirements of 7 CFR parts 3015 and 3016. An audit report will be submitted to the State Office annually in accordance with OMB Circular A-128, A-110, or A-133, whichever is applicable. The State Office will forward the audit to the National Office Project Manager, within 30 days after receipt, with the State Office’s comments and recommendations.

(c) *Penalty for noncompliance.* If the Administrator determines that a Small Farmer Outreach Training and Technical Assistance project does not meet or no longer meets the objective of the program, that there has been a violation of the cooperative or other agreement, that reporting requirements are not being met, or that funds are not being used only for the operation and administration of the Small Farmer Outreach Training and Technical Assistance Program, the awarding official is authorized to impose any penalties or sanctions established in 7 CFR parts 3015 and 3016. Penalties may include withholding payments, suspension of the cooperative agreement or other agreement, or termination for cause. If a penalty for noncompliance is enforced, the reason(s) will be stated in a letter to the recipient along with appeal rights pursuant to subpart B of part 1900 of this chapter.

§§ 1943.138–1943.140 [Reserved]

§ 1943.141 Nondiscrimination.

The policies and regulations contained in subpart E of part 1901 of this chapter apply to grants and other agreements made under this subpart.

§ 1943.142 Environmental requirements.

The policies and regulations contained in subpart G of part 1940 of this chapter apply to grants and other agreements made under this subpart.

§§ 1943.143–1943.150 [Reserved]

PART 1944—HOUSING

Subpart A [Reserved]

Subpart B—Housing Application Packaging Grants

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- 1944.52 Definitions.
- 1944.53 Grantee eligibility.
- 1944.54–1944.61 [Reserved]
- 1944.62 Authorized representative of the applicant.
- 1944.63 Authorized use of grant funds.
- 1944.64–1944.65 [Reserved]
- 1944.66 Administrative requirements.
- 1944.67 Ineligible activities.
- 1944.68 [Reserved]

- 1944.69 Agency point of contact.
- 1944.70 Targeting of HAPG funds to States.
- 1944.71 Term of grant.
- 1944.72 Application packaging orientation and training.
- 1944.73 Package submission.
- 1944.74 Debarment or suspension.
- 1944.75 Exception authority.
- 1944.76–1944.99 [Reserved]
- 1944.100 OMB control number.
- EXHIBIT A TO SUBPART B [RESERVED]
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Subpart C [Reserved]

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

- 1944.151 Purpose.
- 1944.152 Objective.
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